



*State v. Reginald Giles*

**I.D. No. 0107003146**

May 31, 2002

suppress, the responses of the State, as well as the testimony upon hearing of the motion, it appears to the Court that:

*Facts*

1. On July 5, 2001, Reginald V. Giles (“defendant”) was arrested by the Milford Police Department and subsequently indicted for trafficking in cocaine; possession of a narcotic schedule II controlled substance with intent to deliver; possession of a firearm by a person prohibited; maintaining a vehicle for keeping controlled substances; possession of a firearm during the commission of a felony; possession of a deadly weapon by a person prohibited; and possession of a narcotic schedule II controlled substance.

2. Some weeks prior to July 5, 2001, Sgt. Rust (“Rust”), of the Milford Police Dept., was notified by one of the Milford Police detectives in the Criminal Investigation Unit that they had interviewed a subject in relation to a different crime and that this subject wished to give information of a drug nature. Rust responded to the station and interviewed this confidential informant (“CI”). Upon interviewing this CI, Rust learned that he or she had been involved in drug activity and was recently the victim of violence related to drug activity. As a result of this bad experience the CI wanted to do something. The CI volunteered the names of individuals who were selling crack cocaine in Milford and beyond. One of these names was known to Rust; therefore, he was able to confirm, personally, the reliability of some of this CI’s information. In addition, the CI stated he or she had worked with the Delaware State Police as an informant. Rust confirmed this with

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a State Police Detective that worked with the Special Investigations Unit, and found that the State Police considered this CI to be proven and reliable in the past. Moreover, the information provided by this CI had led to recent arrests in several other drug cases. Other than a minor traffic violation, this CI had no outstanding criminal charges pending of which Rust was aware at the time of the interview. The CI does have a criminal record, however.

3. On July 5, 2001,<sup>1</sup> at approximately 4:25 p.m. the CI notified Rust of a subject driving from the Ellendale area going from Georgetown and then making a delivery of cocaine to Dover. The subject would be traveling Northbound on Route 113 through Milford in a Pontiac Grand Prix with a Delaware temporary tag XA444089. The confidential source told Rust that the operator of the vehicle was a heavy-set, balding, black male and that this individual went by the nickname of “Reg”. The CI also said that the individual would be carrying a least a half ounce of cocaine in the vehicle as well as a handgun. Rust testified that the confidential source stated that this green Grand Prix operated by this black male would be traveling through Milford North bound on U.S. Route 113 between the hours of 1700 and 1800.

4. Upon receiving this information, Rust notified another Milford Police

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<sup>1</sup> Considering it an accurate summary, the Court has largely excerpted the facts in this matter from the State’s Letter Opening Br. at 2-4, and notes that the defendant, as well, has found the State’s translation of the facts as they occurred on July 5th to be “a fairly accurate rendition of the testimony,” but disagreed with the State’s interpretation. (See Defendant’s Letter Reply Br. at 1 (Jan. 4, 2002)).

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Officer, Sgt. Jefferson (“Jefferson”). Jefferson and other officers on the same shift began to keep an eye out for a green Pontiac Grand Prix.

5. At approximately 1800 hours, Jefferson observed a green Pontiac Grand Prix matching the description provided by Rust drive past him Northbound on US Route 113 in Milford. Jefferson testified that he was parked where the Chamber of Commerce is located at the time the vehicle drove by him and that he pulled out behind the vehicle to further confirm information provided by Sgt. Rust. Sgt. Jefferson observed that the tag number provided by the confidential source matched the tag number of the vehicle he was following. He also noticed that the operator was a black male who was balding. Given this information, Sgt. Rust was told, over the radio, that vehicle described to him earlier was now in Milford.

6. Sgt. Jefferson followed the green Pontiac Grand Prix into the Milford Plaza shopping center. He did not immediately contact the defendant or the vehicle because of the information provided that the defendant would be armed with a handgun. Sgt. Jefferson observed the defendant exit the Pontiac Grand Prix and enter the liquor store in the shopping center. When he observed this behavior, he was able to further confirm that the defendant had a "heavy set" build and was in fact a balding black male. Sgt. Jefferson testified that because of the information provided by the confidential informant indicating he had a gun, he waited until he had further back-up officers before he engaged in what he described as a "felony stop".<sup>2</sup>

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<sup>2</sup> "Felony stop" as described by the Officer, related more to the manner in which the vehicle was stopped as opposed to the fact that the defendant was stopped for suspicion of felony

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7. Sgt. Jefferson testified that he observed the defendant return back to his vehicle after a short period of time and began driving out of the Milford Plaza shopping center returning Northbound on US Route 113 in the direction of Dover.

8. At this time, Sgt. Jefferson indicated that he had sufficient back-up to stop the defendant's vehicle for the reasons provided by the confidential informant. Sgt. Jefferson attempted to stop the vehicle in a rather unpopulated area along the highway to protect the safety of both himself and the public (given the information that the defendant would be carrying a firearm). Sgt. Jefferson testified that once the police officers were in place, the vehicle was stopped. One police car was in front of the defendant's vehicle while one was to its left side and two were positioned to its rear.

9. The defendant was directed to remove himself from the vehicle and ultimately handcuffed and patted down. Defendant was not given the warnings provided under *Miranda v. Arizona*.<sup>3</sup> At that time the defendant was asked whether or not he had any contraband (drugs, weapons, etc.) in the vehicle to which he stated no. The defendant was also asked for consent to search the car. Before the police had an opportunity to actually search the vehicle, the defendant told the police that there was a handgun in the trunk of the car. The defendant's keys were obtained and the

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activity. However, it is undisputed the defendant was stopped for no reason other than the information provided from the confidential source and that the predictive behavior evidenced by the information panned out during his investigation.

<sup>3</sup> 384 U.S. 436 (1966).

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trunk was opened. A handgun was found in the trunk. Sgt. Jefferson further testified that he was concerned about the possibility of a second handgun because the box that this handgun was found in was not the same type as the gun that was located. Therefore Sgt. Jefferson had a concern that the defendant may have had another weapon in his possession at the time of the vehicle stop.

10. At this time, the defendant's criminal history was run by a police officer at the scene using the mobile computer terminals carried in patrol vehicles. It was then discovered that the defendant was a convicted felon in the State of Virginia and therefore was prohibited from possessing a firearm. The defendant was placed under arrest for Possession of a Firearm by a Person Prohibited.

11. While this was occurring, Sgt. Steve Rust had arrived at the scene and requested that a Harrington Police Officer bring a drug sniffing dog to inspect the vehicle for the presence or absence of the odor of narcotics. The dog alerted to the vehicle in several areas but, given the weather conditions, the police decided it would be more prudent to tow the vehicle to a garage and continue their investigation.

12. The vehicle was towed to a Milford garage for examination. Prior to the vehicle being examined, Detective Rust had prepared a search warrant which was approved by the Justice of the Peace Court to specifically search the vehicle for the presence of controlled substances. A copy of this search warrant was identified as State's Exhibit 1 during the suppression hearing. Subsequently, the Milford Police Department discovered approximately 22 grams of cocaine underneath the rear seat of the Pontiac Grand Prix.

*Claims*

13. The defendant alleges that the CI in this case was not a past proven reliable informant, and at best is an anonymous tipster. Consequently, the defendant maintains that the State could not rely on the CI's tips to establish reasonable suspicion for the stop, or probable cause for the arrest. Accordingly, the stop and arrest were illegal and any evidence obtained thereby must be suppressed. Moreover, since the defendant was not read his rights under *Miranda*, any evidence gathered from the time of the custodial interrogation is fruit of the poisonous tree and must be suppressed.

*Reliability of Confidential Informant*

14. "An informant's tip may form the basis of probable cause where the 'totality of the circumstances' would lead [one] to conclude that the information is reliable. An officer may rely on an informant's tip so long as the informant's statement is reasonably corroborated by other matters within the officer's knowledge."<sup>4</sup>

15. The totality of the circumstances in this case indicate that the information provided by the CI was reliable. "In measuring the totality of the circumstances when an informant's tip is involved, this Court has considered such issues as the reliability of the informant, the details contained in the informant's tip and the degree to which the tip is corroborated by independent police surveillance

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<sup>4</sup> *State v. Lewis*, 1988 WL 130432 at \* 2 (Del. Super. Ct.) (Citing *Hopkins v. State*, 501 A.2d 774, 775 (Del. 1985)); see also *Hubbard v. State*, 2001 WL 1089664 at \*4 (Del. 2001).

and information.”<sup>5</sup> If, as in this case, “the informant’s tip is sufficiently corroborated, the tip may form the basis for probable cause even though ‘nothing is known about the informant’s credibility.’”<sup>6</sup>

16. Two different police bodies corroborated the reliability of the information supplied by this informant. Earlier information supplied to the State Police by the CI was “‘past proven reliable’”<sup>7</sup> and led to arrests for drug violations. Moreover, information provided to the Milford police was predictive and self corroborating. “[T]he information provided by the informant was corroborated when [the CI’s] prediction of the future activities . . . came to fruition.”<sup>8</sup> In addition, some CI information was corroborated by the personal knowledge of Sergeant Rust.

#### *Investigatory Stop*

17. In determining if the investigatory stop and detention was constitutionally permissible, the Court will consider the Delaware constitutional standards for police investigatory stops.<sup>9</sup> These have been codified by 11 *Del. C.*

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<sup>5</sup> *Hubbard*, 2001 WL 1089664 at \*4 (citing *Tatman v. State*, 494 A.2d 1249 (Del. 1985)).

<sup>6</sup> *Id.*

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

<sup>8</sup> *State v. Saunders*, 2000 WL 703021 at \*2 (Del. Super. Ct.).

<sup>9</sup> In this area, Delaware law provides more protection to its citizens than the Federal Constitution. *Jones v. State*, 745 A.2d 856, 863 (Del. 1999) (interpreting United States and Delaware constitutions so as to construe search and seizure rights under each); *see also, Dorsey v. State*, 767 A.2d 807, 814 (Del. 2000) (finding that “Delaware’s citizens enjoy more rights, more



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§ 1902,<sup>10</sup> which provides in pertinent part:

- (a) A peace officer may stop any person abroad, or in a public place who the officer has *reasonable ground* to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.
- (b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

18. A *stop* or seizure has occurred under Article I, § 6 of the Delaware Constitution, and under 11 *Del. C.* § 1902, when a reasonable person would have believed he or she was not free to ignore the police presence.<sup>11</sup> The focus is on police action and how a reasonable person would view it. It is an objective test. Use of force to the defendant's person is not required to effectuate a stop under § 1902.<sup>12</sup> Nor, does a stop require submission by the defendant to a show of police authority.<sup>13</sup>

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constitutional protections, than the Federal Constitution extends to them" in the area of protection from unreasonable governmental search and seizures).

<sup>10</sup> *Jones*, 745 A.2d at 863.

<sup>11</sup> *Jones*, 745 A.2d at 869; *State v. C.J.M.*, No. CN0003014155, 2000 WL 33200949 at \*2, Chapman, J. (Del. Fam. Dec. 22, 2000) (emphasis added).

<sup>12</sup> *Jones*, 745 A.2d at 869.

<sup>13</sup> *Id.* at 867 (differentiating the requirements for a "seizure" under the Fourth Amendment to the Federal Constitution).

19. Applying the test for when a stop occurs to this case, a reasonable person would have believed he was not free to ignore the police presence when Sgt. Jefferson attempted to pull the defendant over. These actions constituted a seizure of the defendant and must have been “justified *at its inception* by reasonable suspicion of criminal activity as defined in *Terry v. Ohio*.”<sup>14</sup>

*Reasonable Articulable Suspicion*

20. Reasonable articulable suspicion is a lower standard than probable cause.<sup>15</sup> For this reason and because “the informant’s tip is sufficiently corroborated so as to establish probable cause,”<sup>16</sup> the Court finds that there was at least reasonable articulable suspicion of criminal activity that would warrant the intrusion here. The information provided by the CI in this case provided “the necessary indicia of reliability that would suggest that the [CI] had inside knowledge of illegal conduct sufficient to provide the police with the reasonable suspicion required before detaining the suspect.”<sup>17</sup> Under 11 *Del. C.* § 1902(a) the police had the right to stop the defendant and demand his name, address, business abroad and destination.

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<sup>14</sup> 392 U.S. 1, 21, 30 (1968); *see also Caldwell v. State*, ---A.2.d ----, 2001 WL 1078869 at \*3 (Del. Sept. 13, 2001) (emphasis added) (nothing that “‘reasonable ground’ as used in Section 1902(a) has the same meaning as *reasonable and articulable suspicion*” under *Terry*).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Flonnory v. State*, ---A.2d---, 2001 WL 198430 at \*3 (Del.).

*Arrest*

21. The police intrusion quickly became more invasive than a § 1902(a) stop, however. It is the Court's view that the intrusion rose to the level of an arrest when the defendant was cuffed. Then, the "police procedures qualitatively and quantitatively be[came] so intrusive with respect to [the] subject's freedom of movement and privacy issues as to trigger the full protection of the Fourth and Fourteenth Amendments."<sup>18</sup>

*Probable Cause*

22. To effectuate the arrest, the police must have had probable cause, i.e. "information which would warrant a reasonable man in believing that a crime has been committed."<sup>19</sup> Probable cause is analyzed "not by precise standards, but by the totality of the circumstances through a case by case review of the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act."<sup>20</sup> The standard to determine probable cause is well settled.

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<sup>18</sup> *State v. Kang*, 2001 WL 1729126 at \*6 (Del. Super. Ct.) (citations omitted) (noting that "[i]n order to determine whether a seizure is an investigatory detention or an arrest, the Court must examine the reasonableness of the level of intrusion under the totality of the circumstances"). In making its determination as to when an arrest occurred in the instant case, the Court considered the amount of force and the need for force; the extent to which the defendant's freedom of movement was restrained; the physical treatment of the defendant; the number of agents involved; the duration and likelihood of the defendant being armed. *Id.*

<sup>19</sup> *Garner v. State*, 314 A.2d 908, 910 (Del. 1973).

<sup>20</sup> *State v. Maxwell*, 624 A.2d 926, 929-30 (Del. 1993) (citations omitted).

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A finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not. To establish probable cause, the police are only required to present facts which suggest, when *those facts* are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime. The possibility that there may be a hypothetically innocent explanation for each of several facts revealed during the course of an investigation does not preclude a determination that probable cause exists for an arrest.<sup>21</sup>

23. The circumstances preceding the arrest provided Sgt. Jefferson with probable cause (i.e. enough information which would warrant a reasonable man in believing that a crime was being committed). The facts have been fully set forth above. To reiterate, briefly, it reasonably appeared that defendant was in possession of a vehicle that closely matched a predictive description provided by a past proven reliable CI. The self-corroborating nature of the information indicated that the informant “knew the defendant he was dealing with and gave a description of the defendant.”<sup>22</sup> It predicted future events not knowable by a casual observer.<sup>23</sup> When those facts are viewed under the totality of the circumstances, there was a fair

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<sup>21</sup> *Id.*(internal citations omitted) (emphasis in original).

<sup>22</sup> *Chambers v. State*, 1985 WL 14159 at \*2 (Del.).

<sup>23</sup> Two factors, the past proven reliability and the predictive nature of the information provided by the CI thus distinguishes this case from *Flonnory v. State*, —A.2d—, 2001 WL 198430 (Del.).

probability that the defendant had committed a crime, and was somehow involved in drug activity.

*Search Incident to a Lawful Arrest*

24. The totality of the circumstances provided “ sufficient probable cause to justify the search of the vehicle”<sup>24</sup> for contraband and a weapon. When “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 object of the search.”<sup>25</sup> “[B]ecause the police had probable cause to search the entire vehicle, they were justified in conducting a warrantless search of the . . . [trunk],”<sup>26</sup> thus locating the gun.

*Miranda Warnings*

25. Defendant’s statements giving consent to search the vehicle, and his statements providing the location of the gun are not admissible, nor can they be the basis of the search here. This is because they were the result of custodial interrogation without the administration of *Miranda* warnings. These warnings protect a defendant from interrogation in a "police dominated atmosphere," containing "inherently compelling pressures which work to undermine the individual's will to resist and compel him to speak where he would not otherwise

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<sup>24</sup> *Tatman*, 494 A.2d at 1251.

<sup>25</sup> *U.S. v. Johns*, 469 U.S.798 (1982).

<sup>26</sup> *Tatman*, 494 A.2d. at 1252.

do so freely."<sup>27</sup> The *Miranda* warnings are required if the Court determines (1) the defendant was in police custody when they (2) interrogated him.<sup>28</sup>

26. The Court determines that the defendant was in custody at the time he was handcuffed. "A person is in custody when he has been taken into custody or his freedom of action has been deprived in any significant way."<sup>29</sup>

27. Further, the Court finds that the defendant was interrogated when he was asked for permission to search the vehicle and when he was asked if there was contraband in the vehicle. *Miranda* warnings had to be given prior to those questions because the police should have known that they were reasonably likely to elicit an incriminating response.

The United States Supreme Court has defined "interrogation" as "express questioning or its functional equivalent." *Innis*, 446 U.S. at 300-301. *Innis* defined the functional equivalent of express questioning as, "any words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating remark." *Id.* at 301. *Innis* noted, "since police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonabl[y] likely to elicit an

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<sup>27</sup> *Miranda*, 384 U.S. at 467.

<sup>28</sup> *Rhode Island v. Imis*, 446 U.S. 291 (1980).

<sup>29</sup> *State v. Roberts*, 2002 WL 144844 at \*4 (Del. Super. Ct.) (citing *Oregon v. Mathiason*, 429 U.S. 492, 494 (1977)).

incriminating response." *Id.* at 302. (Emphasis in original.)<sup>30</sup>

28. The Court does not find that Defendant's statements were voluntary as the State suggests thus removing them from the purview of *Miranda*.<sup>31</sup> The statements was responses made almost immediately after the questions were put forth at a time the defendant was just surrounded by several officers pointing drawn guns at him. These are questions undertaken during a police-dominated custody situation.

29. *Miranda*, precludes the admission of the above-referenced statements under the exclusionary rule; however, a *Miranda* violation does nothing to preclude the admission of non-statement evidence which would have been inevitably discovered by other legal means. Because the police had the right to search the vehicle incident to a lawful arrest and per the arrest warrant for which there was probable cause (developed as a result of the CI statements and the drug dog alert). Evidence obtained as a result is admissible.

#### *Conclusion*

30. The police had reasonable suspicion to conduct an investigatory stop in this case. There was probable cause for an arrest. The search of the vehicle was a lawful search incident to the arrest. The search of the vehicle pursuant to the

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<sup>30</sup> See *Patton*, 2001 WL 112074 at \*4 (noting that voluntary statements are not subject to *Miranda* and *Innis* distinguish).

<sup>31</sup> *Id.*

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warrant was permissible because there was probable cause. However, because the defendant was not read his *Miranda* rights at the time of the arrest, any incriminating statements received as a result of interrogation before *Miranda* was administered are inadmissible.

Wherefore, consistent with this opinion, defendant's motion to suppress is ***DENIED*** in part and ***GRANTED*** in part. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution