

December 31, 2001

**Stuart Sklut, Esquire
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**RE: State of Delaware v. Joseph Buoncuore
ID No. 0101016058**

**Submitted: September 17, 2001
Decided: December 31, 2001**

On Defendant Joseph Buoncuore's Motion to Suppress. Granted.

Dear Counsel:

The defendant has filed a Motion to Suppress the evidence seized subsequent to his detention on January 20, 2001. The Court conducted an evidentiary hearing and allowed the parties to submit letter memorandum in support of their positions.¹ This is the Court's opinion in this matter.

¹ The Court notes that the memorandum filed by the State simply stated facts they believed had been established beyond that set forth in the defendant's memorandum and cited no legal authority and made no attempt to legally argue their position.

On Saturday, January 20, 2001, at approximately 5:00 p.m., Officer Sullivan, a Brandywine Creek State Park ranger, received a phone call reporting gunshots on the Woodlawn Trustee property adjacent to the state park just west of Route 202. The caller, who identified himself, was hiking on the east side of the Brandywine River in the area between Hurricane Run and the Advanta property located on Route 202. The caller was unsure the exact location of the shots, but generally identified them as being in the area of the Jewish Community Center and the Advanta property. The Woodlawn Trustee property as well as the Brandywine State Park is used for general recreation, hiking and biking, and hunting is prohibited.

After receiving this information, the officer responded to several different areas in or near the park where individuals in the past had parked their vehicles to gain access to the property and illegally hunt. One of those areas was a parking lot behind the Advanta property located on Route 202, in which the officer located a silver and blue Ford pickup truck bearing Pennsylvania tags. The truck was parked adjacent to the Woodlawn property, and except for a minivan that the officer believed belonged to the night security officer at Advanta, it was the only vehicle in the lot. The officer ran the tag number and identified the vehicle as belonging to the defendant, Joseph Buoncuore. The officers had previously received reliable information that Mr. Buoncuore was an individual who was known to poach in the Woodlawn Trustee property area and because of a prior felony conviction was prohibited from possessing a firearm. The officer had also been told by two Pennsylvania game commissioner officers that Mr. Buoncuore had a propensity to be violent and should be approached with caution. As a result, Officer Sullivan contacted Officer Smuzynski, also a park ranger, for assistance, and the two began surveillance of the area where the pickup truck was located.

Soon after the surveillance began, a red Toyota 4 wheel drive vehicle arrived in the parking lot and a male individual exited the vehicle and entered the Ford pickup. This individual was later identified as the defendant but there was no testimony that the officers knew this individual to be Mr. Buoncuore until after his detention. The officer observed no firearm or game or backpack or anything in the defendant's possession as he left the Toyota vehicle. Other than perhaps the clothing being worn by the defendant, i.e. winter outerwear, there was nothing to suggest to the officers that the defendant had been hunting.

At this point the two officers were in the same vehicle and observed the

Red Toyota and Ford pickup exit together from the Advanta parking lot onto Route 202 at which time the officers stopped the defendant's vehicle. As the officers approached the vehicle it appears that the defendant exited the pickup and without further questioning of the defendant or any conduct by him that was threatening, the officers told the defendant to put his hand on the truck and he was handcuffed. The officers subsequently frisked the defendant and found in the pocket of his bib overalls two premeasured black powder charges known as "sabo" rounds. Other evidence to suggest the defendant may have been hunting was subsequently found in his vehicle as well as a shotgun in the red Toyota. The issue now before the Court is whether the officers' stop of the defendant and their subsequent search was illegal.

Based upon the above facts, the Court finds that the officers had reasonable articulable suspicion that the defendant had committed a criminal act and were justified in stopping the defendant's vehicle. They had received reliable information about gunshots in the general area of the defendant's vehicle, they had received information in the past that the defendant had previously hunted on that property and reliable information from other law enforcement officers that the defendant was an avid hunter who would be considered dangerous. When this is added together with their limited observations of the defendant that evening in winter outerwear clothing, it is reasonable for the officers to suspect the defendant may have been illegally hunting on the property.

However, establishing reasonable suspicion to stop the defendant does not equate to the authority to simply walk up to the car, handcuff the defendant and frisk him with the stated purpose of locating additional evidence. When Officer Smuzynski was asked by the prosecutor to state the basis for stopping the defendant's vehicle he stated:

Q. And what was the basis for your stopping that vehicle?

A. Because the vehicle came registered back to him, who we had known is a poacher and a convicted felon.

Q. Any other reason?

A. To attempt to get any evidence of him hunting or and a firearm.

While this is a candid response to the prosecutor's questions, it demonstrates a fundamental failure of the officer to appreciate the limits of the constitutional latitude provided to him under the circumstances. When a police officer

develops a reasonable articulable suspicion to justify a motor vehicle stop, it does not provide that officer with unfettered nor unrestrained discretion to conduct a patdown search or sweep the vehicle.² To do so, the officer must also be able to articulate a reasonable suspicion that the detained individual is armed and presents a threat to the officer or to others.³ While this Court will give significant deference to the officer's experience and the inherent dangers associated with such stops, it will not shirk its responsibility to insure that the officer's conduct was reasonable and warranted under the totality of the circumstances existing at the time of the stop.

What is perhaps most surprising about this case is the lack of effort by the State to justify the patdown search as one needed to insure the officer's safety. While the officers testified about receiving information about the defendant's violent propensities, they could point to no other factual evidence to justify their conduct. They did not observe a weapon, or the results of any hunting activity, the defendant's actions were not suspicious or threatening, and at the time of the search, other than the officers' suspicion, there was no indication that the defendant had illegally hunted that day. Further, there was no evidence to suggest that the officers even knew that the individual they were stopping was Mr. Buoncuore. More disturbing is that from the officers' testimony, the need to justify their actions in this manner appears to not have even been considered by them. It is clear that when they stopped Mr. Buoncuore they intended to arrest him because they believed he had illegally hunted that evening. As such, the patdown search was not the result of the officers' fear or concern for their safety but the initiation of that arrest. Because of this, for their action to be legally justified, the State must establish that the officers had probable cause to make this arrest. Other than receiving information about hearing gunshots and knowing Mr. Buoncuore's past hunting history, the State has failed to present any other evidence to justify a finding of probable cause. The facts set forth

² See *State v. Hunter*, Del. Super., No. Gebeline, J. (April 10, 2000)(Mem. Op.) at2(citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968) for the proposition that in limited situations “an individual may be stopped, briefly detained, and frisked for investigatory purposes without probable cause,” but that such a protective search, which is permitted without a warrant, must be on the basis of reasonable suspicion, and strictly “limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.”).

³ See *Woody v. State* 765 A.2d 1257, 1266 (2001)(citing *Terry v. Ohio*, 392 U.S. 1, 27, 30-31 for the rule that “[l]aw enforcement officers . . . may conduct a protective pat down if the officer justifiably believes the detained individual may be in possession of a weapon or weapons that could be used to harm the officer.”). See also *Adams v. Williams*, 407 U.S. 143, 145-46 (1972)(noting that “the patdown is designed not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence. . .”).

earlier in this opinion will not support the arrest of the defendant at the time the patdown search was conducted. As such, the evidence seized must be suppressed.

This is unfortunate because with patience and some additional effort, the probable cause the officers needed may have developed. If while questioning Mr. Buoncuore the other officer had proceeded to the red Toyota he perhaps could have observed the shotgun that was in the vehicle (it appeared from the testimony that the shotgun was in plain view) or perhaps even obtained information from the female driver about what had occurred earlier that evening or even obtained permission from her to search the vehicle. With some additional investigative effort they had the means to obtain additional information that would perhaps justified the search. Unfortunately they arrested Mr. Buoncuore based upon his past history, not on evidence of his illegal activity of that evening. This rush to arrest has caused them to lose the evidence that would have established that Mr. Buoncuore was illegally hunting and would have resulted in his conviction.

Based upon the above, the Court grants the defendant's Motion to Suppress, and the evidence seized from the defendant at the time of his detention will not be allowed into evidence.

Sincerely yours,

Judge William C. Carpenter, Jr.

WCCjr:twp

cc: Prothonotary