

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE :
 : I.D. No. 0309004734
v. :
 :
WESLEY J. FISHER, :
 :
Defendant. :

Submitted: January 23, 2004
Decided: February 18, 2004

ORDER

Upon Defendant's Motion to Suppress. Granted.

Christopher R. Parker, Esquire, Deputy Attorney General, Dover, Delaware,
attorneys for the State of Delaware.

Paul S. Swierzbinski, Esquire, Public Defender, Dover, Delaware, attorneys for the
Defendant.

WITHAM, J.

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Introduction

Before this Court is Wesley J. Fisher's motion to suppress. The State opposes the motion. Based upon the evidence presented at the Suppression Hearing and the memoranda filed by the parties, Defendant's motion is *granted*.

Background

On September 5, 2003, Corporal Tony DiAlessandro of the Delaware State Police and a member of the Governor's Task Force was conducting surveillance of an alleged high crime area in Kent County, Delaware. He observed a red station wagon parked in the Arby's parking lot and the two male occupants, later identified as Anthony Davis and Wesley Fisher, enter the Goose Creek convenience store. The two men exited the store and remained in the vehicle for approximately twenty minutes in the parking lot. Davis, the driver, exited the vehicle and raised the hood. Corporal DiAlessandro continued his observation for five minutes and then approached the vehicle believing they might be experiencing car trouble. Corporal DiAlessandro asked Davis if everything was okay, to which Davis responded, "Yeah." The Corporal then asked if Davis was having car trouble; Davis did not respond. Corporal DiAlessandro repeated the question and again got no response. At that point he noticed Davis sweating profusely and asked Davis for his name, date of birth and identification. Davis could not supply identification but gave his name as Robert L. Davis with a date of birth of January 16, 1964. Corporal DiAlessandro then requested the same information from the passenger, who was able to provide positive identification showing that he was Wesley Fisher.

Davis and Fisher were asked to wait in the car while Corporal DiAlessandro verified their information. Fisher's identification was verified and there were no capiases issued for him; however, Davis' identification could not be verified. Corporal Minear then arrived on scene to assist Corporal DiAlessandro with the situation. After Corporal DiAlessandro asked him about it, Davis admitted he had given a false name. Davis was placed under arrest for Criminal Impersonation. Pursuant to the arrest, Corporal DiAlessandro intended to search Davis' vehicle and have it towed. Therefore, Corporal Minear asked Fisher to step out of the car. When Fisher exited, he had his hand in his pocket and did not remove it despite being asked to several times. Due to concern for his safety, Corporal Minear conducted a pat down search of Fisher. In his pants pocket, Corporal Minear felt what he believed to be crack cocaine in a plastic bag. After the substance field tested positive for crack cocaine, Fisher was placed under arrest.

Discussion

When a warrantless search is conducted, the State bears the burden of proof on a motion to suppress evidence seized as a result of the seizure and search.¹ In this case, the State Troopers did not have a warrant to seize or search the Defendant, therefore the burden is on the State to establish that the search was conducted properly and the evidence was seized appropriately.

The Fourth Amendment to the United States Constitution protects citizens from illegal searches and seizures. A seizure occurs when a suspect is physically

¹ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

forced to stop or submits to a show of authority.² In *State v. Arterbridge*,³ this Court found that certain factors were indicative of a show of authority including blocking the suspect's vehicle from leaving, activating the emergency lights, and surrounding the suspect. However, the Court must look at the totality of the circumstances in determining whether a seizure actually occurred.⁴

In this case, Corporal DiAlessandro observed the Defendant and Davis enter and exit a convenience store and sit in their vehicle for twenty minutes. Then he observed Davis open the hood of the car and peer inside for five minutes. It was at this point that he pulled up in his police vehicle and parked in a way to block Davis' vehicle in its parking spot. When Corporal DiAlessandro approached Davis, he identified himself as a State Police Trooper. The question is whether a reasonable person under these circumstances would believe that he or she was not free to ignore the police presence.⁵ Because the car in which Fisher was a passenger was blocked in its parking spot by the police vehicle, a clear show of authority, and Corporal DiAlessandro repeatedly asked questions after Davis stopped answering, suggests to this Court that a reasonable person under these circumstances would

² *Quarles v. State*, 696 A.2d 1334, 1336 (Del. 1997).

³ 1995 Del. Super. LEXIS 587 at *10.

⁴ *Id.* at *10.

⁵ *Purnell v. State*, 832 A.2d 714, 719 (Del. 2003).

believe that he or she could not ignore the police presence.⁶ Therefore, a seizure of Davis and Fisher occurred when Corporal DiAlessandro parked his police vehicle stopping theirs from exiting and began speaking to Davis.

The State argues that the encounter between Davis and Fisher and Corporal DiAlessandro would fall under the “community caretaker doctrine” and thus constitute a reasonable seizure. Under this doctrine “an officer who has an objective, reasonable and articulable suspicion that a citizen is in apparent peril, distress or need of assistance may stop and investigate for the purpose of assisting the person.”⁷ In *Enos*, this Court concluded that when a police officer saw the defendant’s vehicle parked on the side of the road and the driver was unconscious with his head hanging partially out of the window, the officer had reasonable and articulable suspicion that the defendant was in peril, distress or in need of assistance. Therefore the stop of the defendant’s car in that case was appropriate.

In *State v. Roberts*,⁸ this Court found that the community caretaker doctrine did not apply when the State Trooper could not point to objective evidence establishing that the seized person was in need of assistance. In *Roberts*, the Trooper noticed a car with its lights on parked on the shoulder of the highway. The

⁶ One should remember that at this stage, Corporal DiAlessandro did not note any suspicion of criminal activity.

⁷ *State v. Enos*, 2003 Del. Super. LEXIS 71 at *9-10 (citing *State v. Lovegren*, 51 P.3d 471, 475-76 (Mont. 2002)).

⁸ 2001 Del. Super. LEXIS 462.

car had not been there several moments earlier, but the Trooper illuminated her emergency lights and stopped behind the vehicle. After approaching the vehicle, she suspected the driver was intoxicated. The driver was later charged with Driving Under the Influence. The Court concluded that the State Trooper's actions constituted a seizure because she used her emergency lights when stopped behind the vehicle.⁹ In addition, the Court found that the community caretaker doctrine did not apply because there was no objective evidence that the driver was in need of police assistance.¹⁰ Stopping on the side of the road for several moments with the engine idling and lights on was not sufficient to establish a basis for applying the doctrine.

In this case Corporal DiAlessandro merely saw the car in which the Defendant was a passenger parked legally in a parking lot with the hood raised; there was no other indication of peril or distress other than the raised hood. Corporal DiAlessandro could not point to any other objective evidence of peril or distress. When he parked his police car, Corporal DiAlessandro could have parked in such a way as to not block Davis and Fisher's vehicle. Rather, he blocked their car in the parking spot. The objective evidence in this case has established that a seizure occurred, but there was no objective evidence presented establishing that

⁹ *Id.* at *6.

¹⁰ *Id.* at *8.

Davis and his passenger Fisher were in need of police assistance.¹¹ At this point, the mere fact that the car was legally parked, with the driver simply examining the engine compartment with no other apparent equipment or vehicle difficulty, such as a steaming engine, would not indicate to a reasonable person that assistance was required. Once Davis said that all was okay with the remark, “Yeah,” no issue remained for further police activity. Based on these circumstances, Corporal DiAlessandro’s actions would not fall within the “community caretaker doctrine.”

Therefore, the next issue is whether Corporal DiAlessandro possessed reasonable and articulable suspicion that Davis and Fisher had committed a crime or were about to commit a crime *at the time he approached* their vehicle.¹² To determine whether reasonable and articulable suspicion exists, a court must examine the totality of the circumstances surrounding the situation “as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining these objective facts with such an officer’s subjective interpretation of those facts.”¹³ A seizure is improper if there is no reasonable and articulable suspicion to provide grounds for the seizure. Because Corporal DiAlessandro’s actions of parking his vehicle to block the Defendant’s vehicle and repeatedly asking the same question constituted a seizure, he must have had reasonable and

¹¹ *Id.*

¹² See *Terry v. Ohio*, 392 U.S. 1 (1968).

¹³ *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).

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articulable suspicion of criminal activity when he actually approached Davis and Fisher. Any actions by Davis and Fisher after Corporal DiAlessandro approached them which might have raised suspicion are not relevant to this Court's determination of whether the Corporal possessed reasonable and articulable suspicion necessary to make the stop.

In his testimony, Corporal DiAlessandro stated that Davis and Fisher were in a high crime area. Merely stating that this area was considered "high crime" does not by itself establish the suspicion necessary to permit a stop. He became suspicious when they sat in their vehicle for twenty minutes after exiting the convenience store, believing they might have been waiting for someone. However, Corporal DiAlessandro did not witness Davis or Fisher perform any illegal act. They were parked legally in the parking lot and were not violating any motor vehicle laws. In fact, the Corporal testified that he approached them because he believed they were having car trouble, not because of any criminal activity. However, as stated previously, the Corporal's actions do not fall within the community caretaker doctrine. Therefore, because Corporal DiAlessandro was unable to point to any articulable facts demonstrating suspicion that Fisher and Davis had committed or were about to commit a crime, this Court has no choice but to find that Corporal DiAlessandro did not possess the suspicion necessary to permit this stop of Davis and Fisher.¹⁴

¹⁴ Corporal DiAlessandro noted that after he began speaking to Davis, Davis was sweating profusely. Sweating profusely on a summer day, without any other indication of criminal activity,

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Finally, because Corporal DiAlessandro's stop of Fisher was improper, any evidence seized from him as a result of the stop is the fruit of an unlawful search and is inadmissible.¹⁵ Therefore, the crack cocaine found in Fisher's pocket is inadmissible.¹⁶

Conclusion

Based upon the memoranda submitted by the parties and the testimony presented at the Suppression Hearing held on January 6, 2004, Defendant's Motion to Suppress the crack cocaine seized following the illegal stop is *granted*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh

oc: Prothonotary
xc: Order Distribution
File

does not establish reasonable suspicion for detaining an individual. Even if it were sufficient, Corporal DiAlessandro did not observe this behavior until after he had already seized the Defendant. Therefore, this cannot form a basis for establishing reasonable suspicion.

¹⁵ See *Wong Sun v. United States*, 371 U.S. 471 (1963).

¹⁶ It is important to note that the Court is only resolving this issue with respect to the search and seizure of Fisher. This Court expresses no opinion regarding the arrest of Davis on the outstanding capiases.