

Before this Court is a Motion to Suppress filed by Defendant Ronald Stumbers through his counsel, Jan A. T. van Amerongen, Jr., Esquire. Stumbers argues that the evidence should be suppressed because his arrest and subsequent search were in violation of his constitutional rights. A suppression hearing was held before this Court on January 21, 2005. The Court is prepared to render its decision.

I.

At or around 11:00 p.m. on July 9, 2004, Detective Wiley (“Wiley”) and Officers Vasecka (“Vasecka”) and Clark (“Clark”) of the New Castle County Police Department went to 16 Iowa Road to execute an arrest warrant for Sonja Howard. She was the resident/occupier of 16 Iowa road. Several outstanding capiases had been issued against her. Clark and Vasecka were dressed in black tactical gear. Their shirts had white “police” printed on the front identifying them as police officers. Wiley was dressed as a construction worker. He hoped to lure her out of her trailer by pretending there was an electrical problem.

Clark and Vasecka were parked across the street from the trailer in an unmarked green pick-up truck. From their truck, they noticed a white male, later identified as Ronald Stumbers, walk up the street towards 16 Iowa Road. Stumbers left the officer’s view when he cut behind the 16 Iowa road trailer.

Vasecka testified that he did not know where Stumbers had come from, nor where he was going.

The events that followed were presented in a somewhat convoluted manner at the hearing. Vasecka testified that he and Clark had gotten out of the car to help Wiley arrest Ms. Howard when Stumbers came around the trailer. According to Vasecka, Stumbers was trying to go into the trailer at 16 Iowa road when he ran into the officers. Once he saw the police, he turned like he was going to run away. Immediately, Vasecka pinned Stumbers down and handcuffed him. He was not asked any questions and was arrested. He was patted down for weapons while on the ground. Vasecka testified that at that point, Stumbers was not searched. It was later determined that Stumbers lived in the trailer park several streets from Iowa road.

Clark testified that as he and Vasecka were in front of the trailer at 16 Iowa road, Stumbers came up behind them. Clark testified that because Stumbers surprised him, he pinned him on the ground for officer safety. Clark asked Stumbers “who are you” and “what are you doing here.” Stumber’s answers did not satisfy the officers and he was arrested. Contrary to the testimony of Vasecka, Clark stated that Stumbers was not patted down on the ground.

On cross-examination, Clark admitted to not knowing where Stumbers had been after he cut behind the trailer. Moreover, Clark’s testimony before this Court

was impeached with the transcript of his testimony at the probable cause hearing of July 26, 2004. At the probable cause hearing, Clark did not testify that he had seen Stumbers prior to Sonja Howard's arrest. More significantly, Officer Clark's probable cause testimony contradicted his testimony before this Court. At the probable cause hearing he testified that the cocaine was found outside of the trailer. Here, he testified that the cocaine was found inside the trailer.

Wiley was the last witness for the State. Unlike Clark and Vasecka, he testified that when Stumbers came around the corner of the trailer, Clark and Vasecka were still in the truck. Wiley also testified that Stumbers was arrested, patted, and searched outside. Finally, Wiley stated that Stumbers was searched again inside the trailer.

Stumbers is charged with the following offenses: Possession of a Controlled Substance; Loitering; and Possession of Drug Paraphernalia. He now seeks to suppress any and all evidence recovered from the search and seizure pursuant to the exclusionary rule laid forth in *Mapp v. Ohio*.¹

Discussion

On a Motion to Suppress evidence, the State bears the burden of proving that the search and seizure comported with federal and state constitutional rights and

¹ 367 U.S. 643 (1961).

state statutory law.² The Fourth Amendment of the United States Constitution guarantees that individuals will be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”³ Accordingly, warrants are generally required before the police can conduct a search.⁴ Several exceptions to the warrant requirement, however, have been created by the judiciary. One such exception is a “search incident to a lawful arrest.”

A search incident to a lawful arrest is “based upon the need to disarm and to discover evidence.”⁵ Where an arrest is based on probable cause, it is a reasonable intrusion under the Fourth Amendment.⁶ Because the intrusion is lawful, “a search incident to the arrest requires no additional justification.”⁷ The United States Supreme Court has held “that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a ‘reasonable’ search under that Amendment.”⁸

In determining whether the drugs were lawfully seized, the starting point for this Court then becomes whether the arrest of Stumbers was lawful. Stumbers was

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

³ U.S. Const. amend. IV. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that the Fourteenth Amendment to the United States Constitution makes the Fourth Amendment applicable to the states).

⁴ *Ortiz v. State*, 2004 WL 2741185 *2 (Del. Supr.)(citing *California v. Carney*, 471 U.S. 386, 390-91 (1985)).

⁵ *U.S. v. Robinson*, 414 U.S. 218, 235 (1973).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

arrested for Loitering. To be guilty of Loitering, a person must “fail[] or refuse[] to move on when lawfully ordered to do so by any police officer.”⁹ An arrest for loitering must be supported by probable cause.¹⁰ “‘Probable cause’ is a ‘practical, nontechnical concept[]’ that must be measured by the totality of the circumstances.”¹¹ “Generally it lies ‘somewhere between suspicion and sufficient evidence to convict.’”¹²

In *Carter v. State*, the police first observed the defendant at 2:30 a.m. After fifteen minutes of surveillance, they ordered Carter to move on.¹³ The police observed Carter again at 4:30 a.m. on a different city street. Without encouraging him to move along, the officers arrested the defendant for Loitering.¹⁴ The Delaware Supreme Court held that the “temporal and spatial gap between the[] two locations was enough to satisfy the initial command”¹⁵ to move on. The officers, therefore, had to request that Carter move along when they encountered him the second time. The Court held that because the Loitering arrest was not in accordance with the Statute, the arrest and subsequent drug recovery were unlawful.¹⁶

⁹ 11 *Del. C.* § 1321(1).

¹⁰ *Carter v. State*, 814 A.2d 443, 445 (Del. Supr. 2002).

¹¹ *Ortiz*, 2004 WL 2741185 at *2.

¹² *Id.*

¹³ *Carter*, 814 A.2d at 444.

¹⁴ *Id.*

¹⁵ *Id.* at 445.

¹⁶ *Id.* at 446.

As in *Carter*, this Court finds here that the police lacked probable cause to arrest for Loitering. When he was first spotted, the officers merely observed Stumbers walking down the street. Although it was nighttime, his presence was not overly alarming. In fact, Vasecka did not tell Clark to conduct any further surveillance of Defendant. Moreover, the officers did not have to tell Stumbers to move along because he cut out of their view. Therefore, the officer's own testimony of Stumbers' disappearance behind the trailer belies the State's contention that Stumbers was Loitering.

Similarly, the State has failed to meet its burden that the second sighting of Stumbers warranted an arrest for Loitering under the Constitution and State law. Despite the conflicting testimony of the Officers, it is clear to this Court that Stumbers was walking in the vicinity of 16 Iowa road when he was pinned down and searched. The officers did not ask Stumbers to move away from the trailer, nor did Stumbers have time to do so. Instead, they arrested him immediately contrary to the Loitering Statute. Accordingly, his arrest was illegal. As a result, the drugs must be suppressed because they were not a product of a lawful search incident to arrest. Defendant's Motion is **GRANTED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.