



## FACTS

On March 8, 2005, several officers from the Wilmington Police Department were conducting a special over-time assignment concerning quality of life incidents. At or around 1:25 p.m., Officers Riley and Lenhardt first observed the Defendant, Robert Moody (“Moody”), loitering inside of Kitchen Express Chinese Restaurant at the corner of 28<sup>th</sup> and Market Streets. Officers Riley and Lenhardt were stationed in an unmarked van approximately twenty feet from where Moody was standing. Moody remained on the restaurant’s premises for approximately twenty to thirty minutes, but did not purchase any food or converse with the patrons. The Officers also observed another man engage in a hand-to-hand drug transaction in the Chinese Restaurant. Moody was not involved in this transaction.

After viewing the hand-to-hand drug transaction, the Officers decided to approach Moody and the other suspect. As they approached, Moody began to walk away from them. Moody continued to look over his shoulder in the direction of the Officers as he walked away from them. At that point, the Officers who were five to six feet away, observed Moody throw what appeared to be an altered cigar, commonly known as a marijuana blunt. Moody also threw a clear plastic bag thought to contain drugs. Based on the observations of the Officers, coupled with their training and experience, the Officers asked Moody to stop. Moody disregarded the warning and continued to walk away from the Officers. Fearing

for their safety, and the possibility of Moody fleeing, Officer Riley tackled Moody to the ground. Moody was arrested and a search incident to arrest was performed. The basis for the stop was the drug charges, not loitering.

The search revealed twenty-eight bags of crack cocaine packaged for sale, and one plastic bag containing cocaine and 4 .22 caliber rounds of ammunition. The ground that day was wet, and the items retrieved were dry. Both the blunt and the bags filled with the white substance field-tested positive for marijuana and cocaine. Moody was then transported to Wilmington Hospital where he was treated for facial lacerations.

#### DISCUSSION

In a Motion to Suppress, the State bears the burden of proving that the search and seizure comported with federal and state constitutional rights and state statutory law.<sup>1</sup> 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.”<sup>2</sup> Although nearly identical in language, Delaware’s Fourth Amendment “provides a greater protection for the

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<sup>1</sup> *Hunter v. State*, 783 A.2d 558, 560 (Del. Supr. 2001).

<sup>2</sup> 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).

individual than the United States Constitution in the determination of whether a seizure by the State has occurred.”<sup>3</sup>

In *Terry v. Ohio*,<sup>4</sup> the Supreme Court held that a detention could only be lawful where it was premised on reasonable and articulable suspicion of criminal activity.<sup>5</sup> Articulable suspicion “does not deal with hard certainties, but with probabilities.”<sup>6</sup> Delaware has defined reasonable suspicion as “the officer’s ability to ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.’”<sup>7</sup> In determining if there is reasonable suspicion, a court looks at the totality of the circumstances,<sup>8</sup> coupled with “inferences and deductions that a trained officer could make which ‘might well elude an untrained person.’”<sup>9</sup>

A seizure of the person occurs “‘when the officer, by means of physical force or show of authority, has in some way restrained the liberty’ of an individual.”<sup>10</sup> The police action must convey to a reasonable person that he was

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<sup>3</sup> *Flonnory v. State*, 805 A.2d 854, 857 (Del. Supr. 2001)(citing *Jones v. State*, 745 A.2d 856, 860 (Del.Supr. 1999)).

<sup>4</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>5</sup> *Id.* at 22.

<sup>6</sup> *United States v. Cortez*, 449 U.S. 411, 418 (1981).

<sup>7</sup> *Coleman v. State*, 562 A.2d 1171, 1174 (Del. Supr. 1989)(citing *Terry*, 392 U.S. at 21).

<sup>8</sup> *Jones v. State*, 745 A.2d 856, 861 (Del. Supr. 1999).

<sup>9</sup> *Harris v. State*, 806 A.2d 119, 127 (Del. Supr. 2002).

<sup>10</sup> *Flonnory*, 805 A.2d at 857.

not free to “go about his business.”<sup>11</sup> The inquiry in this case is when Moody would reasonably believe he was not free to leave.

This Court finds that Moody was seized when the Officers asked him to stop, however, here, unlike *Jones v. State*,<sup>12</sup> the Officers formulated reasonable suspicion prior to tackling Moody to the ground. Before Moody failed to stop when summonsed, the Officers had observed him loitering in a high crime area, repeatedly looking over his shoulder in a suspicious manner when the Officers were following him, and throw a blunt and clear plastic bag containing drugs. Based on the totality of the circumstances, viewed through the officer’s trained eyes, this seemingly innocent behavior was suspicious. Although the Officers were not absolutely positive that the cigar was a blunt, reasonable suspicion only requires probability. The Officers knew that cigars were commonly used as blunts. The Court finds that the blunt, coupled with Moody’s loitering in a high crime area gave rise to reasonable suspicion to stop. As a result, Moody was lawfully detained under the Fourth Amendment and his Motion to Suppress is **DENIED**.

**IT IS SO ORDERED.**

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Judge Calvin L. Scott, Jr.

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<sup>11</sup> *Id.* (citing *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988)).

<sup>12</sup> 745 A.2d 856 (Del. Supr. 1999).