

Before this Court is a Motion to Suppress filed by Defendant Randolph White (“White”) through his counsel, Robert M. Goff, Jr. Specifically, White argues that the search and seizure of his person resulting in the confiscation of cash and heroin was performed in contravention of his Delaware and United States Constitutional rights. The State opposes the Motion contending that the stop, search, and seizure of White were all valid. This is the Court’s decision.

FACTS

On March 2, 2005, Officers Hicks and Fossett of the Wilmington Police department were patrolling in a marked car in the 600 block of East 10th Street of Wilmington. The Officers, who were in uniform, observed a male later identified as Randolph White, on 10th Street. According to the Officers, White was aware of the Officer’s presence and frequently looked over his shoulders in their direction.

The Officers observed White go into a corner convenience store three times in one hour. After leaving the convenience store, White sat on the steps of a house on 10th Street. The Officers testified that they were very familiar with the 10th Street vicinity and knew that White did not live in the house where he was seated. Officer Hicks testified that he was unaware if White knew the people who owned the house.

Bennett and 10th Streets are high drug areas. The Officers, who had approximately 8 years experience between them, became suspicious of White due

to the constant looking over of his shoulder, visits to the convenience store, and high drug area. The Officers did not, however, observe White engage in any hand-to-hand drug transactions. Acting on their suspicions, the Officers approached White to inquire into his loitering on the steps of a house he did not occupy. The Officers asked White to put out his cigarette. Officer Hicks testified that he did not convey to White that White was not free to leave. White complied with the cigarette request, but then took off running. The Officers chased White and ultimately apprehended him.

White was taken into custody as he was lying on the ground after being apprehended. The Officers patted him down for safety and seized baggies of heroin. A bulge in his rear pocket revealed \$197 in cash. Defendant was read his Miranda rights. Thereafter, Defendant confessed to selling heroin.

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 state statutory law.¹ The Fourth Amendment of the United States Constitution guarantees that individuals will be “secure in their persons, houses, papers, and

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

effects, against unreasonable searches and seizures.”² Although nearly identical in language, Delaware’s Fourth Amendment “provides a greater protection for the individual than the United States Constitution in the determination of whether a seizure by the State has occurred.”³

In *Terry v. Ohio*,⁴ the Supreme Court held that a detention could only be lawful where it was premised on reasonable and articulable suspicion of criminal activity.⁵ Articulable suspicion “does not deal with hard certainties, but with probabilities.”⁶ 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.’”⁷ In determining if there is reasonable suspicion, a court may look at the totality of the circumstances,⁸ coupled with “inferences and deductions that a trained officer could make which ‘might well elude an untrained person.’”⁹

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

² 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).

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

⁴ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁵ *Id.* at 22.

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

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

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

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

individual.”¹⁰ The police action must convey to a reasonable person that he was not free to “go about his business.”¹¹ The inquiry in this case is when White would reasonably believe he was not free to leave.

This Court finds that White was seized when the Officers asked him to extinguish his cigarette, however, here, unlike *Jones v. State*,¹² the Officers formulated reasonable suspicion prior to White’s flight. Before White fled, the Officers had observed him repeatedly looking over his shoulder in a suspicious manner, evading the police by entering the convenience store, and loitering in a high-drug area. Based on the totality of the circumstances, viewed through the officer’s trained eyes, this Court finds that there was reasonable suspicion to stop White when the Officers asked him to extinguish his cigarette. Furthermore, there was reasonable suspicion to stop White once he fled. As a result, White was lawfully detained under the Fourth Amendment and his Motion to Suppress is DENIED.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

¹⁰ *Flonnory*, 805 A.2d at 857.

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

¹² 745 A.2d 856 (Del. Supr. 1999).