

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR NEW CASTLE COUNTY**

<b>STATE OF DELAWARE</b>	)	
	)	<b>CRIMINAL ACTION NUMBERS</b>
v.	)	
	)	<b>IN-05-05-0636 thru IN-05-05-0640</b>
<b>RONALD T. COMEGER</b>	)	
	)	<b>ID No. 0504006416</b>
Defendant.	)	

*Submitted: March 8, 2006*

*Decided: March 16, 2006*

***MEMORANDUM OPINION***

*Upon Motion of Defendant to Suppress - DENIED*

Brian J. Robertson, Esquire, Deputy Attorney General, Department of Justice, for State of Delaware

John S. Malik, Esquire, of Wilmington, Delaware, attorney for the defendant

HERLIHY, Judge

Defendant Ronald Comeger moves to suppress evidence seized without a warrant from his person. After a hearing on March 2, 2006,<sup>1</sup> the Court has determined that the motion must be denied.

Jeffrey Carey, a 16 year New Castle County Police officer had been informed by another officer that he had a confidential informant who might be helpful. That informant had pending charges and had been told “helpful” information could benefit him.

Prior to April, 2005, Carey had no contact with this informant. He and the informant met in early April. They discussed a person known to the informant as “D” who, the informant said, was selling heroin around the County. He said he had been buying heroin from “D” for a long time. The informant described “D” as an African-American male, 140-160 lbs, with braids. The informant also described “D” as driving a gray or silver Dodge Intrepid. The informant believed he could buy ten bundles of heroin from “D”.

On April 8th, the informant called “D” in the presence of the police and arranged to meet “D” at a 7-11 on South Maryland Avenue. By arrangement with the police, the “meet” was to occur about an hour and a half to two hours later. The time lapse was

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<sup>1</sup> The hearing had been scheduled for an earlier date, but the police witness was unavailable and it was rescheduled. At the rescheduled hearing, the officer testified he thought the initial conversation between the informant and Comeger had been recorded. The Court gave counsel time to listen to the recording since it was not produced at the hearing. Subsequent checking, however, revealed that conversation had not been recorded. The Court learned that on March 7th and told counsel on March 8th the motion was denied. Comeger went through a stipulated trial on March 9th. He is preserving his right to appeal this decision.

designed to give the police an opportunity to set up surveillance.

Shortly before the “meet,” the informant called “D” again. But this time a different male answered. This call was made, apparently, from a police car. The informant asked about the buy and reported the “new” person answering the phone said, “Yeah we got that; we’re on the way.” This second telephone call was in the presence of a different officer as Carey was located in a nearby telephone booth as part of the surveillance team.

About five minutes later, a gray Cirrus (a Chrysler product) drove into the parking lot of a Burger King located across the street from the 7-11. Two African-American males got out. The driver went into the Burger King. The passenger came across the street and went into the 7-11. That male was 5'6" - 5'8", 140 -160 pounds and had braids. The informant, who was present and in a position to see this person, indicated to the police that this male was “D.” “D” went inside the store. The decision was made to stop him.

A “take down” team was present to do that. Each was dressed in County Police identification (Carey was in plain clothes). As this male, who was the defendant Comeger, came out of the 7-11, the “team” yelled for him to get down. He ran, instead.<sup>2</sup> He was tackled and admitted having drugs on him.

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<sup>2</sup> There was an issue which the Court deems mostly unimportant to the disposition of this motion. Carey said the team did not have guns drawn, but Comeger testified they did. Curious that someone would run from police with guns drawn.

### *Discussion*

Because this was a warrantless search, the State bears the burden of proof of showing its propriety.<sup>3</sup> When the police, with or without guns drawn, but in uniform ordered Comeger to get down, he was “seized.”<sup>4</sup> At the moment the police ordered Comeger to get down, therefore, they had to have had a reasonable articulable suspicion to do so.<sup>5</sup> In deciding whether the police had that reasonable articulable suspicion, the Court examines the totality of the circumstances which is viewed through the eyes of a reasonable, trained police officer.<sup>6</sup>

The informant was unknown to Carey prior to this matter. It appears that he had been arrested by another officer and was trying to “work off” his charges. In short, there is no evidence he had been used as an informant before and, even if he had, there is no vouching for his past reliability.

Nevertheless, the police overheard his call to “D” to buy heroin. They overheard his second call to received by another person about the purchase. Admittedly, the vehicle the informant said “D” drove turned out to be a Cirrus rather than an Intrepid, but they are similar Chrysler Corporation products.

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<sup>3</sup> *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

<sup>4</sup> *Flonnory v. State*, 805 A.2d 854, 858 (Del. 2001).

<sup>5</sup> *Jones v. State*, 745 A.2d 856, 863 (Del. 1999).

<sup>6</sup> *Backus v. State*, 845 A.2d 515, 517 (Del. 2004).

The buy was arranged for a specific time and at a specific 7-11. Even though the Cirrus was parked across the street at a Burger King, one of the occupants came to the 7-11. That person was 140 - 160 pounds, had braids and, most importantly, was identified by the informant as “D,” his seller. The police also knew from the phone calls the informant made that two people were involved. And sure enough, after the second call during which the recipient said “We’ll be right there”, the two people show up in the Cirrus.

Therefore, at the moment of “seizure”, the police had reasonable articulable suspicion to stop and further question “D”, Comeger. A heroin buy with him had been arranged and confirmed in police presence, and Comeger was identified at the 7-11 as the seller with whom the informant had made arrangements for the buy. The informant stated his knowledge of “D” was based on prior heroin purchases from him. That history, and to some extent the informant’s reliability, is confirmed to a large extent by “D”’s (Comeger’s) willingness to sell heroin to the informant and coming to the 7-11.

### *Conclusion*

For the reasons stated herein, the defendant Ronald Comeger’s motion to suppress is **DENIED**.

**IT IS SO ORDERED.**

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J.