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

**IN AND FOR NEW CASTLE COUNTY**

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| **STATE OF DELAWARE** | ) | |
| | ) | |
| | ) | ID# 0511015730 |
| v. | ) | |
| | ) | |
| **EUGENE R. JOHNSON,** | ) | |
| | ) | |
| Defendant. | ) | |

Date Submitted: April 19, 2006
Date Decided: May 26, 2006

***OPINION***

*Upon Defendant's Motion to Suppress –* ***GRANTED***

Appearances:

Shawn E. Martyniak, Esquire, Deputy Attorney General, 820 North French Street, Wilmington, Delaware, 19801, Attorney for the State

Thomas A. Foley, Esquire, 1326 King Street, Wilmington, Delaware, 19801, Attorney for the Defendant

Jurden, J.

## I. Background

On November 18, 2005, at approximately 9:30 p.m., Corporal Laird of the Delaware State Police noticed a vehicle parked along Rose Lane, east of Delaware Route 9, in New Castle, Delaware. The vehicle was legally parked. Corporal Laird noticed an operator in the vehicle and an individual leaning in the front passenger side window of the vehicle. Able to see through the windshield, Corporal Laird observed "some type of transaction going on inside the vehicle," but saw no cash or items exchanged. At the suppression hearing, Corporal Laird testified this area is an "open drug market" and he had made "numerous drug arrests" in the vicinity. Nevertheless, the police had received no complaints or tips about this vehicle. According to Corporal Laird, when the operator noticed Corporal Laird's fully marked patrol vehicle approaching, he turned on his headlights and proceeded towards Route 9. As the vehicle approached his patrol vehicle, Corporal Laird noticed that tinted side windows prevented him from seeing inside of the vehicle. Corporal Laird stopped the vehicle because of the tinted side windows. During the traffic stop, in compliance with Corporal Laird's request, the operator of the vehicle, Eugene Johnson (the "Defendant"), provided his license, registration, and proof of insurance. All of the Defendant's documentation was in order. According to Corporal Laird, the Defendant appeared nervous.

Corporal Laird called for a K-9 Unit and Probation and Parole.[1] The K-9 Unit arrived approximately 15 to 20 minutes later. The K-9 Unit walked around the Defendant's vehicle, but did not alert. The K-9 Unit then departed. The Defendant was further detained for another 15 to 20 minutes until the Probation and Parole Officers arrived. Upon arrival, the responding Probation Officers talked with Corporal Laird, who advised them about the traffic stop and the result of the K-9 sniff. One of the Probation Officers testified he spoke with the Defendant and the Defendant was "uncooperative." The Probation Officers confirmed the Defendant's status as a Level One probationer and, after talking via telephone with their supervisor, conducted an administrative search of his vehicle. This search revealed a marijuana blunt concealed in the center console ashtray. The blunt was not in plain view. The Probation Officers then proceeded to the Defendant's residence and conducted an administrative search there. This search yielded 237.1 grams of marijuana, $11,465.00 in United States Currency, and a digital scale.

The Defendant has filed the instant Motion to Suppress claiming that his prolonged detention was unlawful and, thus, the contraband seized must be suppressed as "fruit of the poisonous tree."[2] For the reasons set forth below, the Court finds that the police lacked reasonable, articulable suspicion to support the

[1] A SEJIS computer check revealed the Defendant was on probation. Corporal Laird did not know the level of that probation.
[2] Mot. to Suppress at 8, *State v. Johnson*, ID# 0511015730 (Mar. 8, 2006) (D.I. 8). *See Wong Sun v. U.S.*, 371 U.S. 471 (1963).

prolonged detention of the Defendant, and therefore his Motion to Suppress must be **GRANTED.**

## II. Discussion

Delaware law permits a police officer to stop a person and demand that person's name, address, business abroad, and destination, where the officer has reasonable ground to suspect that person is committing, has committed, or is about to commit a crime.[3] Such a detention may not exceed two hours.[4] The Delaware Supreme Court has held that "the term 'reasonable ground' … has the same meaning as the words 'reasonable and articulable suspicion'" used by the United States Supreme Court in *Terry v. Ohio*.[5] Reasonable and articulable suspicion exists "when an officer can 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.'"[6]

Delaware courts utilize a two-prong standard for reviewing the conduct of detaining officers:

> First, courts must look at the totality of the circumstances, "including objective observations and 'consideration of the modes or patterns of

[3] In its entirety, 11 *Del. C.* § 1902 reads as follows: "Questioning and detaining suspects[:]"
(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.
(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.
(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

[4] *See* 11 *Del. C.* § 1902(c).

[5] *Riley v. State*, 892 A.2d 370, 374 (Del. 2006), *citing Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citing *Terry v. Ohio,* 392 U.S. 1 (1968)).

[6] *Riley*, 892 A.2d at 374-75, *citing Jones*, 745 A.2d at 861.

> operation of certain kinds of lawbreakers.'" Second, courts must consider "the inferences and deductions that a trained officer could make which 'might well elude an untrained person.'"[7]

In this case, the initial stop of the Defendant's vehicle for tinted windows constituted a seizure of the Defendant for Fourth Amendment purposes. The Defendant concedes that the initial stop was lawful. The Defendant argues, however, that there was no reasonable, articulable suspicion to prolong the detention, particularly after the K-9 Unit failed to alert after sniffing the perimeter of the vehicle. The Defendant contends that once he produced his valid driver's license, registration, and proof of insurance, Corporal Laird had no reasonable, articulable suspicion to support further detention and questioning beyond the limited time necessary to investigate the tinted window violation.

The State maintains that Corporal Laird had the requisite reasonable, articulable suspicion for the prolonged detention because: (1) the Defendant was parked along the side of the road, (2) in a high drug crime area, (3) an individual was leaning into his passenger side window, (4) the Defendant and the individual were engaged in "some kind of transaction," (5) the Defendant drove away when he saw Corporal Laird's marked patrol vehicle, and (6) the vehicle had tinted side windows.

After considering the evidence presented at the suppression hearing, the Court disagrees that there was reasonable, articulable suspicion justifying the

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[7] *Harris v. State*, 806 A.2d 119, 126-27 (Del. 2002) (quoting *Quarles v. State*, 696 A.2d 1334, 1338 (Del. 1997 (quoting *U.S. v. Cortez*, 449 U.S. 411, 417-18 (1981))).

prolonged detention.

As this Court held in *State v. Huntley*:[8]

> If a person is lawfully stopped for a traffic violation, the officer may detain the individual only as long as necessary to effectuate the purpose of the stop. If during such a stop the officer further detains the person in order to investigate other possible crimes, the officer must have a reasonable articulable suspicion that additional criminal activity is afoot. "Reasonable suspicion" is more than an ill-defined hunch; rather, under the totality of the circumstances - the whole picture-the detaining officer must have "a particularized and objective basis for suspecting the particular person stopped of criminal activity." It requires the police officer to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the investigatory stop. The detention must be "reasonably related in scope to the circumstances which justified the interference in the first place." In making this assessment, the Court must judge the facts under an objective standard: "would the facts available to the officer at the moment of the seizure …'warrant a man of reasonable caution in the belief' that the action taken was appropriate?"

Mr. Johnson's vehicle was legally parked. Corporal Laird did not see a hand-to-hand transaction or a money exchange. He saw someone leaning in the window of the vehicle. Corporal Laird conceded that he did not have reasonable, articulable suspicion to stop the Defendant's vehicle until he noticed the tinted side windows. When questioned during the traffic stop, the Defendant produced the required documents, all of which were in order. The Defendant appeared nervous, but it is

[8] *State v. Huntley*, 777 A.2d 249, 254-55 (Del. Super. Ct. 2000) (citations omitted).

not unreasonable or unusual for persons stopped by the police to be nervous. Corporal Laird then prolonged the detention an additional 15 to 20 minutes to allow the K-9 Unit to sniff the perimeter, even though he had no reasonable, articulable suspicion that the Defendant had committed, was committing, or was about to commit illegal drug activity. And, even though the K-9 Unit did not alert, Corporal Laird further prolonged the detention to allow time for Probation Officers to arrive. Although Corporal Laird stated that the basis for the stop was tinted windows, he did not issue a citation to the Defendant for the tinted windows until after the Probation Officers conducted the administrative searches and uncovered contraband.

After viewing the totality of the facts and circumstances, the Court finds that the prolonged detention of the Defendant and resultant administrative searches by the Probation Officers were unlawful. Once the Defendant proffered his valid driver's license, registration, and proof of insurance, the police should have either released him or ticketed him for the tinted windows. Instead, and without "a particularized and objective basis" for suspecting that "additional criminal activity…[was] afoot,"[9] the police prolonged his detention so that a K-9 Unit could sniff for drugs around the perimeter of his vehicle. The sniff revealed nothing, yet the police continued the Defendant's detention to allow Probation Officers to arrive at the scene. The Defendant was on Level One Probation, one of the least

[9] *Id.*

restrictive levels of community based supervision. The Probation Officers conducted an administrative search in a situation where the police did not have reasonable, articulable suspicion of illegal drug activity and could not lawfully search the Defendant's vehicle. Under the circumstances, the Probation Officers, like the police, did not have reasonable grounds to believe the Defendant was violating his conditions of supervision or that he had contraband in his vehicle. A Probation and Parole administrative search is not a vehicle to circumvent all Fourth Amendment protections or a license to violate the limited rights of probationers.[10] Although probationers enjoy less Fourth Amendment protection than citizens who are not on probation,[11] they still have some protection from unreasonable searches and seizures.[12] Before a Probation Officer can lawfully conduct a warrantless administrative search, he must satisfy a long list of administrative procedures. These procedures require that the Probation Officer have reasonable grounds to believe an offender is violating conditions of supervision, possesses contraband, or

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[10] *See e.g. State v. Harris*, 734 A.2d 629, 635 (Del. Super. Ct. 1998) (indicating that the failure of Probation and Parole Officers "to comply with procedures, which are presumptively valid, would violate the 'reasonableness' requirement within the meaning of the Fourth Amendment … and would warrant granting the Defendant's Motion to Suppress.").

[11] Probation is a "'form of criminal sanction.'" *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). As explained in *Griffin v. Wisconsin*, a "State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, likewise presents 'special needs'… that may justify departure from warrant and probable-cause requirements. *Id*. at 873-74. Thus, probationers "do not enjoy 'the absolute liberty to which every citizen is entitled, but only … conditional liberty properly dependent on observance of special [probation] restrictions.'" *Id*. at 874 (brackets in original) (citing *Morrissey v. Brewer*, 408 U.S. 471 (1972)). Such "restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large." *Id*. at 875. "Supervision, then, is a 'special need' of the State permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large." *Id*. (emphasis in original). That "permissible degree," however, "is not unlimited." *Id*.

[12] *See Griffin*, 483 U.S. at 873 ("A probationer's home, like anyone else's, is protected by the Fourth Amendment's requirement that searches be 'reasonable.'"); *Owens v. Kelley,* 681 F.2d 1362, 1367 (11th Cir. 1982) ("There is no question that the Fourth Amendment's protection against unreasonable searches and seizures applies to probationers."(citing *Morrissey*, 408 U.S. 471 and *Brown v. Kearney*, 355 F.2d 199 (5th Cir. 1966))). *See also* as to

that an offender's living quarters or property contain contraband. To make this determination, the Probation Officer is to consider:

> (1) observations by a staff member; (2) information provided by an informant; (3) the reliability of the information; (4) the reliability of the informant; (5) the activity of an offender that indicates the offender might possess contraband; (6) information provided by the offender which is relevant to whether the offender possesses contraband; (7) experiences of probation officers with an offender; (8) prior seizures of contraband from an offender; (9) whether the offender has signed Conditions of Supervision; and finally, (10) the offender's prior conviction pattern.[13]

In this case, neither the police nor the Probation Officers observed a drug transaction. There was no information provided by an informant. The Court does not find that the "activity" of the Defendant or the facts and circumstances surrounding the traffic stop for tinted windows indicated the Defendant might possess contraband. The Defendant provided no information relevant to whether he possessed contraband. Probation Officer Dupont alleged at the hearing that the Defendant was "uncooperative," but there is nothing in Officer Dupont's report to support this allegation. In fact, nothing in his report indicates he even spoke with the Defendant. Moreover, Corporal Laird said nothing about the Defendant being uncooperative. Officer Dupont based the decision to search, in large part, on the Defendant's "uncooperative behavior," the fact that the Defendant was on probation for a drug related charge, and "the suspicious activity observed by

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parolees, *Senger v. Jordan***,** 1989 WL 36225, at *2 (N.D.Ill.) ("There is little question … that a parolee retains at least some Fourth Amendment protection from unreasonable searches and seizures.").
[13] *Harris*, 734 A.2d at 634.

Corporal Laird."[14] This Court does not find that sitting in a vehicle legally parked on the side of a road and talking with a pedestrian is "suspicious activity, even in an area known for drug activity."[15]

Under the totality of the circumstances, the prolonged detention by the police was not reasonably related in scope to the circumstances which justified the initial stop – the tinted windows, and therefore the subsequent administrative searches were unlawful. Corporal Laird did not have a reasonable, articulable suspicion that criminal activity, beyond having illegally tinted windows, was afoot. Moreover, the Probation Officers conducted their administrative search when the police could not lawfully search, and they did so without reasonable grounds. For both these reasons, either of which would invalidate the searches, the evidence seized from the Defendant's vehicle and residence is therefore "fruit of the poisonous tree" and inadmissible.[16] The Defendant's Motion to Suppress is therefore **GRANTED**.

**IT IS SO ORDERED.**

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Jan R. Jurden, Judge

cc: Prothonotary – Original
Shawn Martyniak, Esquire
Thomas Foley, Esquire

[14] *See Harris*, 734 A.2d at 631 ("a Probation Officer is supposed to have some *independent knowledge* that there is criminal activity or a violation of probation." (emphasis added)).
[15] *See Riley*, 892 A.2d at 376 ("presence in a high crime area is a factor that may be considered by police" but "an individual's presence in a high crime area, without more, is insufficient to establish reasonable suspicion").
[16] *Brown v. Illinois*, 422 U.S. 590 (1975); *Wong Sun*, 371 U.S. 471.