

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTHONY MORRIS,	§
	§
Defendant Below-	§ No. 687, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr.A. Nos. S02-06-0195I
Plaintiff Below-	§ S02-06-0196I
Appellee.	§ S02-06-0197I

Submitted: July 11, 2003
Decided: September 8, 2003

Before **HOLLAND, BERGER** and **STEELE**, Justices

ORDER

This 8th day of September 2003, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Anthony Morris, was found guilty by a Superior Court jury of Possession With Intent to Deliver Cocaine, Possession of Drug Paraphernalia, and Resisting Arrest. He was sentenced to a total of 32 years incarceration at Level V, to be suspended after 15 years for decreasing levels of probation. This is Morris's direct appeal.¹

¹At trial, Morris waived his right to counsel and proceeded pro se, with a public defender acting as stand-by counsel.

(2) In this appeal, Morris claims that the police lacked probable cause to arrest him, thereby violating his state and federal constitutional rights. On the day of trial prior to jury selection, Morris raised the issue of a lack of probable cause for his arrest. The judge refused to consider the issue, stating that it had been raised too late.²

(3) The evidence at trial established the following. On May 28, 2002, the Governor's Task Force investigated a report of drug activity on Polly Branch Road, located east of Selbyville in Sussex County, Delaware.³ The area is known to law enforcement as a high crime area where drugs are sold openly. An informant contacted the Task Force to report that Morris was selling drugs and provided a detailed description of Morris's clothing and his location. Officer John McColgan, Corporal Rodney Layfield, and Sergeant Monroe Hudson of the Delaware State Police, accompanied by Probation Officer Mark Dawson, drove in an unmarked vehicle onto Polly Branch Road trying to locate Morris.

²No pretrial suppression motion was filed.

³The Governor's Task Force is a special law enforcement unit that targets high crime areas and probationers who are high-risk offenders.

(4) As the officers proceeded down the road, they noticed Morris standing with two other men. Morris began to walk towards their vehicle, but, as the vehicle came closer, he suddenly appeared alarmed. Morris then reached into his pocket, pulled out a small white object and tossed it behind him into some bushes. As the officers got out of their vehicle, Morris attempted to flee. Sergeant Hudson ordered him to stop, but he did not do so. After chasing Morris a short distance, Sergeant Hudson was able to subdue and handcuff him. Morris was searched and \$255 was found in his possession. The two men standing with Morris, Christopher Sturgis and Lamar Morris, Morris's cousin, also were searched.⁴

(5) Corporal Layfield searched the area where he had seen Morris tossing the white object and located a white pill bottle. A white powdery substance was found inside the bottle, which later was determined to be 24 pieces of crack cocaine weighing a total of 2.58 grams. No paraphernalia such as a pipe for personal use of the cocaine was found.

(6) At Morris's trial, Sergeant Hudson, who testified as an expert in the field of narcotics investigation, stated that, in his opinion, Morris possessed

⁴Crack cocaine was found on Sturgis, who subsequently pleaded guilty to Possession With Intent to Deliver Cocaine.

the crack cocaine with the intention of selling it. He based his opinion on the quantity of the drugs, the lack of paraphernalia for personal use of the drugs, the amount of money found in Morris's possession, and the fact that Morris was unemployed.

(7) Both Sturgis and Lamar Morris testified on the defendant's behalf. They stated that they did not see the defendant throw the bottle behind him. Morris's mother testified that she had given Morris the money found on him at the time of his arrest. Finally, Morris himself testified that he did not possess any drugs on the day of his arrest.

(8) This Court reviews a denial by the Superior Court of an untimely motion to suppress under an abuse of discretion standard.⁵ A motion to suppress filed on the eve of trial need not be considered in the absence of exceptional circumstances.⁶

(9) We find no abuse of discretion on the part of the Superior Court in this case. The record reflects no exceptional circumstances such as would have warranted consideration by the Superior Court of an untimely motion to

⁵*Pennewell v. State*, Del. Supr., No. 410, 2002, Veasey, C.J. (April 29, 2003) (citing *Barnett v. State*, 691 A.2d 614, 616 (1997)).

⁶*Id.*

suppress. Moreover, even if the Superior Court had considered Morris's argument that the police lacked probable cause to arrest him, there was no basis for granting a motion to suppress on that basis in any case. The informant's description of Morris's clothing and location, the fact that the area where Morris was located was known for drug activity, Morris's alarmed reaction to the officers' arrival, the officers' observation that Morris threw an object behind him after the police arrived, Morris's attempt to flee, and the subsequent retrieval of the bottle containing a white powdery substance—all clearly constituted probable cause for Morris's arrest.⁷

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁷*Maxwell v. State*, 624 A.2d 926, 928 (Del. 1993).