

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ISAIAS RIVERA ORTIZ,	§	
	§	No. 16, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0210012072
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 3, 2004  
Decided: November 16, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 16<sup>th</sup> day of November 2004, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The defendant below, Isaias Ortiz, appeals from a sentencing order of the Superior Court, claiming that the trial judge erred in denying Ortiz's motion to suppress evidence that was obtained during a warrantless search of his car, and in refusing to grant his request for a continuance so that an interpreter could be present at the trial.

2. Because the search of the vehicle was lawful under two distinct exceptions to the warrant requirement, this Court affirms the admission of the

evidence obtained as a result of that search. Because the denial of the continuance was well-reasoned and supported by the evidence, we also affirm that decision as well.

3. In October 2002, based upon reliable and confirmed information that drugs were being sold from a first floor apartment at 1908 Lancaster Avenue in Wilmington, the Wilmington police obtained a warrant to search that location for drugs. Before executing the search warrant, the police organized a controlled "buy" with a confidential informant, who was known to be reliable, on October 18, 2002.<sup>1</sup> The informant went to the apartment and was told that there were no drugs available, but that he should come back around 7:30 p.m. because someone would be delivering more drugs at about that time. The informant was instructed to wait for the drugs to be delivered and to call the police when the drugs arrived.

4. Shortly after 7:30 that same evening, the informant called the police officers and told them that he had observed a Dominican male arrive with "a prissy female" and that they had put 13 bags of heroin and a large amount of crack cocaine on the table in the apartment. The informant also told the police that the traffickers were planning to leave soon. Ten minutes later, the police observed a black man, later identified as Ortiz, and a well-dressed female, exit the building.

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<sup>1</sup> This informant had provided information leading to between three and seven convictions for drug offenses, as well as other services including controlled buys from drug houses.

The confidential informant approached Ortiz outside the building and engaged him in conversation. Thereafter, the police then followed the suspects for two blocks and watched them get into a car.

5. The police stopped the car, detained the suspects, and asked them for identification. Both suspects responded they had none. While searching for identification, one policeman reached into the backseat of the car and removed a jacket, in the pocket of which the officer found a clear plastic bag containing an off-white chunky substance. The police also found money and a set of keys in the car's passenger compartment.

6. The two suspects were then taken into custody and moved to a staging area while the police executed the search warrant for 1908 Lancaster Avenue. While inside the apartment, the police found bags of heroin and cocaine, and arrested two more people. All four suspects were then taken to the police station.

7. After learning that Ortiz and his companion lived at 1933 West Fourth Street, the police took the set of keys found in the passenger compartment of the car and determined that they fit Apartment B at 1933 West Fourth Street. The police later obtained a search warrant for that apartment, where, as a result of the search, they discovered cocaine.

8. Before trial, Ortiz moved to suppress the drugs that had been discovered in the pocket of the jacket, arguing that the evidence had been obtained

as a result of an illegal search of the car. Ortiz also moved to suppress the drugs found at 1933 West Fourth Street on the basis that they constituted “fruit of the poisonous tree.”

9. The trial judge denied the suppression motion, ruling that under the totality of the circumstances there was probable cause to arrest Ortiz and his companion, that the search of the car was therefore lawful, and that, accordingly, the “fruits” obtained from that search were not tainted.

10. On the date scheduled for trial, Ortiz requested an interpreter for the first time in the case. Ortiz claimed that he could understand English but could not speak it well. The trial judge ruled that Ortiz could both understand and express ideas in English, and denied the request for a continuance.

11. The question of whether probable cause exists in a given case is a mixed question of fact and law.<sup>2</sup> On that issue the trial court’s historical factual findings will be upheld unless they are clearly erroneous, *i.e.*, not the result of a logical and orderly deductive process. To the extent that the trial court’s ultimate findings implicate questions of law, however, this Court’s review is *de novo*.<sup>3</sup>

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<sup>2</sup> *Rodriguez v. State*, No. 288-1993, 1994 Del. LEXIS 199, at \*7 (Del. June 16, 1994).

<sup>3</sup> *McAllister v. State*, 807 A.2d 1119, 1123 (Del. 2002).

12. Ortiz claims that the trial court erred in denying the motion to suppress the evidence found in the car and the apartment, because the police had not obtained a warrant before searching the vehicle, and because the tainted evidence found in that search was then used to obtain a warrant to search the apartment at 1933 West Fourth Street.

13. The Fourth Amendment of the United States Constitution generally requires the police to obtain a warrant before conducting a search.<sup>4</sup> There are, however, judicially created exceptions to that requirement, two of which are applicable here. The search of Ortiz's car was lawful under both the "search incident to a lawful arrest" and the "vehicle search" exceptions to the warrant requirement. Because the vehicle search was lawful, Ortiz's "fruit of the poisonous tree" argument must fail.

14. The search of the jacket in Ortiz's car was valid as a search incident to a lawful arrest. The passenger compartment of a car may be searched incident to the lawful arrest of an occupant of that car,<sup>5</sup> and any container found within the passenger compartment may also be searched.<sup>6</sup> In this case the search of the car was permissible because the police had sufficient grounds to arrest Ortiz before the

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<sup>4</sup> *California v. Carney*, 471 U.S. 386, 390-91 (1985).

<sup>5</sup> *New York v. Belton*, 453 U.S. 454, 460 (1981); *Traylor v. State*, 458 A.2d 1170, 1173 (Del. 1983).

<sup>6</sup> *Belton*, 453 U.S. at 460-61; *Traylor*, 458 A.2d at 1174.

search occurred, and in fact they did arrest Ortiz contemporaneously with the search.

15. 11 *Del. C.* § 1904(b)(1) authorizes the police to make an arrest without a warrant where “the officer has reasonable ground to believe that the person to be arrested has committed a felony.” This Court has interpreted “reasonable ground to believe” as the legal equivalent of probable cause.<sup>7</sup> “Probable cause” is a “practical, nontechnical concept[ ]” that must be measured by the totality of the circumstances.<sup>8</sup> Generally it lies “somewhere between suspicion and sufficient evidence to convict.”<sup>9</sup> An “informant’s tip may form the basis of probable cause where the ‘totality of circumstances’ would lead a magistrate to conclude that the information provided is reliable.”<sup>10</sup>

16. Under this standard, the police had sufficient probable cause to arrest Ortiz and his companion without a warrant. A reliable informant had described Ortiz and his companion, had accurately predicted when they would emerge from the apartment building, and had spoken with the suspects in front of the building—

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<sup>7</sup> *Thompson v. State*, 539 A.2d 1052, 1055 (Del. 1988).

<sup>8</sup> *Id.*

<sup>9</sup> *State v. Cochran*, 372 A.2d 193, 195 (Del. 1977) (quoting *United States v. Thompson*, 292 F.Supp. 757, 761 (D.Del. 1968)).

<sup>10</sup> *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985) (citing *Illinois v. Gates*, 462 U.S. 213, 233 (1983)).

thereby identifying them. Under the “totality of the circumstances” standard, those facts were sufficient to establish probable cause under 11 *Del. C.* § 1904(b)(2).

17. Ortiz argues that the search was improper because it took place before his arrest. But to fit within the exception, a search need not invariably follow an arrest.<sup>11</sup> The United States Supreme Court has held that where the arrest and search are nearly contemporaneous, the search may precede the arrest, so long as the police do not use the search to establish probable cause for the arrest.<sup>12</sup> Here, Ortiz and his companion were officially taken into custody only a few minutes after the search. The police had probable cause to arrest Ortiz before they stopped his car. Therefore, the search of Ortiz's vehicle fell within the “search incident to arrest” exception to the warrant requirement, and the fruits of that search were admissible.

18. Even if the search of the jacket in Ortiz's car was not incident to a lawful arrest, the evidence was nonetheless admissible under the “vehicle exception” to the warrant requirement. Under the so-called “Carroll doctrine,” the police may conduct a warrantless search of a car where they have probable cause to believe that the car contains evidence of criminal activity.<sup>13</sup>

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<sup>11</sup> *Rawlings v. Kentucky*, 448 U.S. 98, 111 (1980)

<sup>12</sup> *Id.*

<sup>13</sup> *Carroll v. United States*, 267 U.S. 132, 153-54 (1925).

19. Here, the police had probable cause to believe that Ortiz's car contained evidence of criminal activity. The police had received information from a confidential informant that the dealers were waiting to receive another delivery of drugs. The informant later told the police that the distributor had arrived with a large quantity of drugs. The informant identified Ortiz as the distributor, first by describing him, then by predicting when Ortiz would emerge from the apartment building, and then by speaking with him outside. Moreover, when the police followed Ortiz, they observed that his behavior was consistent with that of a drug trafficker. Drug traffickers typically use their cars to transport and deliver drugs to be sold. Given the totality of these circumstances, the police had sufficient probable cause to believe that Ortiz's car contained additional drugs to be delivered elsewhere. Accordingly, the trial judge committed no error in denying the motion to suppress evidence.

20. Ortiz also challenges the trial judge's denial of his motion for a continuance. On a motion for continuance, this Court reviews a trial court's holding for abuse of discretion and will affirm the trial court's decision unless it is shown to have been unreasonable or capricious.<sup>14</sup> Whether or not to use an

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<sup>14</sup> *Trawick v. State*, 845 A.2d 505, 507 (Del. 2004).



interpreter is a decision for the trial judge that will be reversed only if injustice to the defendant is clearly shown.<sup>15</sup>

21. Even though the trial date had been scheduled for three months, Ortiz never indicated that he needed an interpreter until the morning the trial was scheduled to begin. Additionally, Ortiz had previously attended a preliminary hearing and suppression hearing without an interpreter, and had met, conferred, and corresponded with his attorney in English on several occasions without complaint.

22. Upon Ortiz's motion for a continuance, the trial court conducted a hearing and questioned Ortiz, his attorney, and a Department of Corrections officer about Ortiz's ability to understand and speak English. The trial court concluded that Ortiz was able to understand and articulate both concrete and philosophical ideas in English. It is clear from the record that the trial court considered the motion carefully and made a reasonable decision based on the evidence at the hearing. Because the trial judge's decision to deny the motion for continuance was reasoned and deliberate, and did not evidence any resulting injustice to Ortiz, the denial of Ortiz's motion for a continuance was not an abuse of discretion.

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<sup>15</sup> *Garcia v. State*, No. 304, 1995, 1986 Del. LEXIS 1151 (Del. June 19, 1986).

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

BY THE COURT:

/s/ Jack B. Jacobs  
Justice