

IN THE SUPERIOR COURT OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 Plaintiff,)
)
 v.) I.D. No. 1401008161
)
 PERRY JOHNSON,)
)
 Defendant.)

Submitted: May 30, 2014
Decided: October 30, 2014

Defendant’s Motion to Suppress – GRANTED

OPINION

Kate Schulhaus Keller, Esquire, 820 N. French Street, Wilmington, DE 19801.
Attorney for Plaintiff State of Delaware.

Thomas A. Foley, Esquire, 1905 Delaware Street, Wilmington, DE 19806.
Attorney for Defendant Perry Johnson.

CARPENTER, J.

Before this Court is Defendant Perry Johnson's ("Johnson") Motion to Suppress all evidence gathered from his residence on January 14, 2014. In Johnson's Motion, he argues that, operating through the Safe Streets Unit (a joint task force between police and probation officers), officers infringed on his Fourth Amendment rights by searching his home without a warrant. Johnson argues that all fruit of the warrantless search of his residence should, therefore, be suppressed. The Court finds that, under the circumstances of this case, the administrative search is not justified and the Motion to Suppress will be **GRANTED**.

BACKGROUND

During the week of January 14, 2014, members of the New Castle County Safe Streets Unit received an email from a New Castle County Police officer relaying a tip that Johnson, a probationer, was involved in criminal activity. Specifically, the tipster informed police that Johnson was known to "ride around the neighborhood at night with his radio blasting" and on occasion go to a park located in the neighborhood in order to sell and use drugs.¹ In the email, the Safe Streets officers were informed that Johnson was on Level III probation.

With this information, Officer DuPont, assigned to the Safe Streets Unit, began to investigate Johnson. Officer DuPont has been employed as a probation

¹ See Def.'s Br. Ex. A at 2.

officer for almost 15 years; the vast majority of which he has been assigned to a Safe Streets Unit. He worked as a Safe Streets Officer with Wilmington police for ten years, and has worked with the New Castle County Safe Streets Unit for almost 3 years. As a probation officer in the Safe Streets Unit, Officer DuPont does not have any probationers who report to him, nor does he supervise any probationers. Officer DuPont has not had a typical probation caseload since 2002 and, as a Safe Streets officer, his office is at the New Castle County Police headquarters.

After receiving the tipster's information, Officer DuPont accessed the Delaware Automated Correctional System ("DACs") maintained by Probation and Parole and confirmed that Johnson was on probation and found a number of issues in his file: (1) a recent positive urine for marijuana; (2) a missed curfew; (3) a missed office visit; and (4) a failure to complete the court-ordered domestic violence and anger management courses. While these issues were noted in the probation file, Johnson's probation officer had not filed a violation of probation report with the Court. Officer DuPont never contacted, or even attempted to contact, Johnson's probation officer to gather additional information on the supervision of Johnson or to determine why the officer had not filed a violation report. Officer DuPont also confirmed, through a Google search of Johnson's address, that Johnson lived around the corner from a park identified in the tip.

With the information provided by the New Castle County officer, knowledge of issues with compliance of his probation terms, and corroboration that Johnson lived near a park, Officer DuPont contacted his supervisor and conducted a case conference in order to obtain approval to conduct an administrative search of Johnson's residence. According to the checklist used to approve the warrants, the approval was granted based on the following considerations: (a) offender believed to possess contraband; (b) offender in violation of probation/parolee[sic]; (c) proper planning for search completed; (d) sufficient staff to search with individual responsibilities assigned; (e) police called to provide security; and (f) search team members properly trained.

On January 14, 2014 at approximately 7:36 p.m., Officer DuPont, accompanied by two New Castle County police officers and another probation officer from the Safe Streets Unit, arrived at Johnson's home to conduct an administrative search. The officers, believing the home was empty, parked and observed the residence until they saw a car pull into the driveway. Believing it was Johnson, the officers approached the driver of the car, who identified himself as Johnson's father. Johnson's father informed the officers that Johnson was in the basement of the residence, and he led them inside and called for his son.

Johnson met Officer DuPont at the top of the stairs and was informed that

the officers were conducting a “home visit.” When asked to give the officers a tour and show them where he slept, Johnson led the officers to a downstairs room in the basement with a drop ceiling. Officer DuPont informed Johnson that his last urine screen came back positive for marijuana. Although he initially acted surprised, Johnson admitted he had smoked marijuana because he was stressed. Officer DuPont then informed Johnson he would be conducting an administrative search because he received a tip that Johnson was involved in drug activity. Johnson, when asked, stated that there were no guns, drugs, or weapons in the house, and the officers, thereafter, began the search.

Unfortunately for Johnson, the officers uncovered a number of troubling things in the home. Under the mattress in the basement bedroom, the officers found a locked gun safe. When prompted, Johnson told the officers the key to unlock the safe was on the key ring in his jacket pocket, which was hanging next to the bed. The officers used the key to open the safe and found a Ruger P95 nine-millimeter semi-automatic pistol, fully loaded with a 15 round magazine and nine rounds of nine-millimeter ammunition. Also in the safe were ten rounds of nine-millimeter ammunition, a box containing 17 rounds of nine-millimeter ammunition, and a rail mounted laser light. The officers also found an empty box for a forty-caliber handgun, which Johnson informed them was previously seized

by Delaware State Police, and spent rounds of 40-caliber ammunition. In the drop-ceiling, the officers found a scale and drug packaging paraphernalia. With these discoveries, the officers read Johnson his Miranda rights and placed him under arrest.

Johnson subsequently brought this Motion to Suppress. The Court conducted an evidentiary hearing and reserved its decision.

DISCUSSION

Johnson challenges the actions of the Safe Streets officers as a violation of his constitutional rights, but Johnson, as a probationer, does not have the same liberties as ordinary citizens.²

The special nature of probationary supervision justifies a departure from the usual warrant and probable cause requirements for searches, although a warrantless search of a probationer's home must still be “reasonable.” The United States Supreme Court and this Court have held that a warrantless administrative search of a probationer's residence requires the probation officer to have “reasonable suspicion” or “reasonable grounds” for the search. “Reasonable suspicion” exists where the “totality of the circumstances” indicates that the officer had a “particularized and objective basis” for suspecting legal wrongdoing.³

² *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008).

³ *Id.* (internal citations omitted).

Under Title 11, Section 4321(d) of the Delaware Code, the Delaware legislature has granted probation and parole officers the authority to effect searches of the individuals they supervise.⁴

Under that statutory authority, the Department of Corrections has adopted regulations governing warrantless searches of probationers. Those regulations provide that, absent exigent circumstances, a probation and parole officer must obtain the approval of a supervisor, manager or director before conducting a search. The officer and the supervisor must “hold a case conference using the Search Checklist as a guideline” unless “exigent circumstances exist forcing the officer into action.”

“Generally, the following factors should be considered when deciding whether to search: [1] The Officer has knowledge or sufficient reason to believe [that] the offender possesses contraband; [2] The Officer has knowledge or sufficient reason to believe [that] the offender is in violation of probation or parole; [3] There is information from a reliable informant indicating [that] the offender possesses contraband or is violating the law; [4] The information from the informant is corroborated; [5] Approval for the search has been obtained from a Supervisor.” Under those regulations, a probation and parole officer must have personal “knowledge or sufficient reason to believe” or must have received “information from a reliable informant” that the probationer or parolee possesses contraband, is in violation of probation or parole, or is violating the law.⁵

Therefore, although Johnson’s status as a probationer leaves him open to such administrative searches, “Delaware law does not permit suspicionless searches of probationer or parolee residences.”⁶ At a minimum, the officer must have a reasonable basis to suspect wrongdoing, and evidence thereof will be found at the location to be searched.

⁴ *Id.* at 829.

⁵ *Id.* (internal citations omitted).

⁶ *Id.*

The facts here raise two important questions. The first is whether an administrative warrant to search a probationer's residence, whose origin stems from an unverified tip, can be justified by alleged probation violations unrelated or connected to the probationer's dwelling. The second is whether the conduct and makeup of the Safe Streets units suggests they are being used by the police agencies to which they are assigned to circumvent the fourth amendment warrant requirements.

The investigation here was initiated when Officer DuPont received an e-mail from a New Castle County Police officer about Johnson. Officer DuPont testified during the suppression hearing that:

I had received an e-mail from Officer Michael Bingnear of the New Castle County Police Department. He advised he had information from a source who was an identifiable source who alleged that Mr. Johnson was known to drive around the neighborhood with his radio blasting and on occasion go to a park located in the neighborhood in order to sell and use drugs.⁷

The Delaware Supreme Court has previously ruled that when a probation officer receives an anonymous tip, they "must rationally assess the facts made known to them before reaching the critical conclusion that there is a reasonable basis to search a probationer's dwelling."⁸ The procedures established by the probation

⁷Suppression hearing held on May 30, 2014.

⁸*Culver v. State*, 956 A.2d 5, 11 (Del. 2008).

department required the officer in evaluating the reliability of the tip information to consider whether (1) the information was detailed, (2) consistent, (3) the informant was reliable in the past, and (4) to consider the reason why the informant was supplying information.⁹ Based on the testimony presented at the suppression hearing, the tip information here fails all of these factors.

The information regarding Johnson's alleged drug activity lacks specificity about when this activity would occur or any connection to Johnson's home and it appears not to be based upon personal information from the tipster. There was no information provided to Officer DuPont regarding the reliability of the informant, and at best, the nature of the tip appears to suggest a neighbor who disagrees with the conduct of Johnson. However, even if these factors had been established, the Court finds there has to be some reliable information that connects the illegal activity to Johnson's residence. The information provided by the tip does just the opposite.

The illegal conduct allegedly occurred in a park and not Johnson's residence and the officer's subsequent investigation failed to connect the residence to any illegal activity. The officer did conduct a surveillance at the park but at no time was Johnson observed. At best, the officer was able to corroborate that Johnson

⁹ *Id.* (citing Probation and Parole Procedure 7.19 (VI)(E)(3)(6)).

lived near a park, was on probation and was not in compliance with the conditions of his probation. This information, unrelated to the dwelling that the officer intended to search, is not sufficient to justify the administrative warrant. In fact, Officer DuPont conceded as much when he did not check the box on the administrative warrant checklist which read “information from informant is corroborated.”

There is no dispute that Johnson was on probation and that the probation system reflected he previously had a positive urine, had failed to complete his treatment program and had also missed curfews and an office visit. However, in spite of these alleged violations, the level 3 probation officer assigned to Johnson had not filed a violation report with the Court. In fact, Officer DuPont never talked with Johnson’s assigned officer to even verify the information. There is no question that the apparent conduct of Johnson is troublesome and would justify not only a home visit but potentially a violation of his probation by the court. However, that is not the issue here. The question for the Court is whether this information justifies the issue of an administrative warrant to search Johnson’s dwelling. The Court finds, without a correlation between the information the officer had developed and Johnson’s dwelling, it does not. As there is no reasonable basis to believe that the informant information was reliable nor is the

warrant based on personal knowledge of the officer, there is no reasonable suspicion or reasonable grounds to justify the search. Based upon this finding, the Court need not address Johnson's second argument regarding the makeup and conduct of the Safe Streets unit. The Court would however caution that reasonable care should occur regarding the approval of these warrants. While the rights of a probationer to object to a warrantless search of his residence has been diminished, it has not been totally eliminated, and the fact that Johnson has violated probation with no connection to the residence to be searched cannot be supported.

CONCLUSION

Based upon the above, the Motion to Suppress is hereby **GRANTED**.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.