

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

STATE OF DELAWARE)	
)	
v.)	Case No. 1307009350
)	
DARNELL WHYE,)	
)	
Defendant.)	

**Date Submitted: March 10, 2014
Date Decided: April 9, 2014**

*Upon the Defendant's Motion to Suppress Evidence, **DENIED.***

OPINION

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Brady, J.

I. Introduction

Presently before this Court is a Motion to Suppress Evidence filed by Darnell Whye (“Defendant”) on January 6, 2014. Through his Motion, the Defendant moves to suppress (1) evidence found on his person when police stopped and searched him as well as (2) evidence found in an apartment where he was staying as a guest.¹ The Court heard oral argument on February 7, 2014, and the Court, *sua sponte*, raised the issue of whether the Defendant has standing to challenge the search of the apartment. Accordingly, this Court reserved judgment and ordered supplemental briefing from the parties on the issue of standing. The Defendant filed his supplemental brief on February 21, 2014, contending he has standing to challenge the search as an overnight guest in the apartment. Through its supplemental brief, which was filed with the Court on March 7, 2014, the State concedes the Defendant has standing as an overnight guest and may challenge the search of the apartment.² For the reasons discussed below, the Defendant’s Motion to Suppress Evidence is **DENIED**.

II. Facts

On July 11, 2013, at approximately 8:15 p.m., officers with the New Castle County Police Department’s Safe Street and Mobile Enforcement Team were conducting surveillance of the Red Clay Creek Apartment complex.³ During this surveillance, police observed two black males, one wearing a gray, long-sleeve t-shirt,⁴ later determined to be Jeffery Vaughn (“Vaughn”), and another wearing a white t-shirt and black pants, later identified as the

¹ Def.’s Mot. to Suppress p. 2. The Court notes that the Defendant also sought suppression of statements he made to the police after being arrested. The state responded, explaining that it will not use the statements. Therefore, that issue is moot. State’s Resp. to Def.’s Mot. to Suppress ¶ 11

² State’s Supplemental Resp. to Def.’s Mot. to Suppress ¶ 8.

³ State Reply Br. ¶ 1-2.

⁴ Through direct and cross-examination, it became obvious that officers were unsure at the hearing whether the other suspect was wearing a gray sweatshirt, a gray long-sleeved T-shirt, or a T-shirt.

Defendant.⁵ Probation Officer Lewis testified that he watched Vaughn and another man walk up to the Defendant and hand him an unidentified object.⁶ Officer Lewis then saw the Defendant go into 2100 Grafton Drive, reappear after one or two minutes, and then hand Vaughn something.⁷ Vaughn then placed that object in his sock and walked away from the Defendant.⁸ Officer Lewis testified that, based on his training and experience, he believed Defendant and Vaughn had engaged in a hand-to-hand drug transaction.⁹

While maintaining constant visual contact with Vaughn,¹⁰ Officer Bingnear approached Vaughn and, while he was approaching, observed Vaughn withdraw an object his sock, which he dropped on the ground.¹¹ Upon a visual inspection, Officer Bingnear suspected the object Vaughn discarded was crack cocaine, and subsequent field testing confirmed that it was.¹²

While the officers were confronting Vaughn, two detectives approached the Defendant, who was still standing in front of 2100 Grafton Drive.¹³ An investigatory detention revealed the Defendant had four active capiases.¹⁴ A search incident to arrest revealed the Defendant had \$180.00 in cash and a cell phone on his person.¹⁵

Following the Defendant's arrest, Probation Officer Lewis told Detective Bruhn that the Defendant had been seen going in and out of 2100 Grafton Drive, Apartment 81.¹⁶ Police

⁵ *Id.* at ¶ 2.

⁶ Suppression Hr'g Tr. at 12.

⁷ *Id.* at 13.

⁸ *Id.* at 13-14.

⁹ *Id.* at 15.

¹⁰ Officer Bingnear testified that Probation Officer Lewis observed the alleged drug transaction, but lost sight of Vaughn as he walked away. Sergeant Diana of the Delaware State Police was able to maintain a constant visual contact with Vaughn as he walked up the road and reported Vaughn's position to Officer Bingnear so he could make the stop. *Id.* at 27-29.

¹¹ *Id.* at 27-31.

¹² *Id.* at 31.

¹³ Suppression Hr'g Tr. at 43-44.

¹⁴ *Id.* at 43-45.

¹⁵ Def's Mot. to Suppress at 2.

¹⁶ State Reply Br. ¶3.

knocked on the door and were greeted by Jennifer Talton (“Ms. Talton”), who is the Defendant’s estranged wife.¹⁷ Ms. Talton told the police that the Defendant occasionally stayed in the apartment to watch their children and slept on the couch.¹⁸ Officers discovered that Ms. Talton was also wanted on multiple capiases.¹⁹ Ms. Talton testified that the officers said they wanted to come into the apartment and look around, and if she would not allow them to come in, they would arrest her for the outstanding traffic capiases.²⁰ Officers also asked Ms. Talton whether anyone would be able to come and get her children, because if not, they would have to be turned over to Child Protective Services upon her arrest.²¹ Ms. Talton let the officers come into the home and signed a consent-to-search form.²²

Officer Mancuso testified that, when questioned about whether anything illegal was in the apartment, Talton pulled a small bag of marijuana, which Talton claimed belonged to the Defendant, out of an end table next to the couch and told police that the Defendant kept his other belongings in a hallway closet.²³ A search of the closet revealed male clothes, the Defendant’s social security card, and a loaded .44 Magnum.²⁴

III. Discussion

A. Police Possessed the Reasonable Suspicion Needed to Stop Whye

The rights of individuals to be free from unreasonable searches and seizures are provided by the Fourth Amendment of the United States Constitution and Article I § 6 the Delaware

¹⁷ *Id.* at ¶ 4.

¹⁸ Suppression Hr’g Tr. at 88.

¹⁹ Hr’g Tr. at 90-92.

²⁰ *Id.* at 92.

²¹ *Id.*

²² *Id.* at 93.

²³ *Id.* at 67, 71.

²⁴ *Id.* at 71-72.

Constitution.²⁵ Generally, police may only stop an individual if they have reasonable suspicion to believe that the person “is committing, has committed, or is about to commit a crime.”²⁶ To form this reasonable suspicion, an officer is entitled to rely on specific facts and reasonable inferences from those facts.²⁷ This Court considers the totality of the circumstances, through the eyes of a trained police officer.²⁸ The Court must consider the objective facts observed by the officer and the officer’s subjective interpretation of those facts.²⁹

Here, the Defendant claims officers lacked the reasonable suspicion necessary to stop him. However, police observed the Defendant involved in a suspected hand-to-hand drug transaction, with the Defendant as the suspected drug dealer, and Vaughn then placing an object in his sock, and then discarding an object from his sock, which appeared, and was later confirmed, to be crack cocaine. Therefore, the Court concludes that the investigatory detention of Defendant was justified.³⁰

²⁵ U.S.C. Const. Amend. 4; Del. Const. Art. I, § 6.

²⁶ *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001) (citations omitted).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Additionally, although the Court need not reach the issue, the stop was constitutional pursuant to the inevitable discovery doctrine, which is an exception to the exclusionary rule that allows illegally obtained evidence by police to be admitted at trial when the state “can show that the evidence ‘would have been discovered through legitimate means in the absence of official misconduct.’” *Roy v. State*, 62 A.3d 1183, 1189 (Del. 2012) (quoting *Cook v. State*, 374 A.2d 264, 267-68 (Del. 1977)). Under Delaware law, an officer with reasonable grounds to suspect a person is committing, has committed, or is about to commit a crime may stop and “demand the person’s name, address, . . . and destination.” 11 *Del.C.* § 1902(a) (1995). Here the police had reasonable grounds to stop Whye, because the suspected hand-to-hand drug transaction followed by the actions of Vaughn, described above, would lead a reasonable officer to believe that a crime had just been committed. Therefore, officers would be permitted to stop and question Whye. This questioning would lead the police to discover the Defendant’s four active capiases. The discovery of these capiases would have permitted the police to search the Defendant’s person incident to arrest, and the evidence he seeks to suppress to be lawfully obtained.

The Defendant does not challenge that upon learning that the Defendant was wanted, the police were justified in arresting him, searching his person incident to that arrest, and seizing the Defendant's cell phone and money.³¹

For the reasons stated above, the Defendant's Motion to Suppress Evidence found on the Defendant as a result of this stop and the following arrest are **DENIED**.

B. Ms. Talton Voluntarily Gave Consent to Search the Apartment

The United States Supreme Court has recognized that "a basic principal of Fourth Amendment law" states warrantless searches and seizures inside of a home are presumptively unreasonable.³² However, a warrantless search is constitutionally permissible when the government can show the search was conducted after obtaining valid consent.³³ To determine whether consent was given freely and voluntarily, thereby making it valid, this Court must look at the totality of the circumstances.³⁴ The factors this Court considers are: (1) the knowledge of the constitutional right to refuse consent; (2) the age, intelligence, education, and language ability of the person who gave consent; (3) the level of cooperation given to the police; and (4) the length of the detention and the nature of the questions, including coercive behavior by the police.³⁵

The first three factors are not at issue in this case. Ms. Talton had notice that she could refuse the search of her home, because Officer Mancuso explained the consent-to-search form to her. There is no dispute about her mental capacity being competent or whether she was capable of giving consent. Finally, Ms. Talton cooperated fully with the police after it was disclosed she

³¹ See *US v. Robinson*, 414 U.S. 218, 235 (1973) (finding no additional justification is needed to search a suspect following a lawful arrest under the Fourth Amendment).

³² *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984) (citations omitted).

³³ *State v. Harris*, 642 A.2d 1242, 1245 (Del. Super. 1993) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 221-22 (1973)).

³⁴ *Cooke v. State*, 977 A.2d 805, 855 (Del. 2009) (citing *Schneckloth*, 412 U.S. at 219).

³⁵ *Id.* (citing *Schneckloth*, 412 U.S. at 226).

had outstanding capiases. However, the Defendant claims Ms. Talton's consent was not given voluntarily, because the officers said they were going to arrest her if they could not come in and look around her apartment. The Defendant asserts that the police coerced Ms. Talton when they asked her whether she had anyone who could come and get her children, and that the officers would have to call Child Protective Services, if she were arrested because she was a fugitive. The Defendant claims this alleged coercion invalidates Ms. Talton's consent.

Whether the actions taken by the police in this case *sub judice* amount to coercion, thereby invalidating the consent given to search, is not well settled in Delaware. Therefore, this Court looks to the surrounding jurisdictions for guidance. A case decided by the United States Court of Appeals for the Third Circuit, *U.S. v. Henderson*, is instructive.³⁶ In *Henderson*, the defendant's wife was told by a postal inspector that the inspector would get a warrant and search the wife's house if she refused to consent.³⁷ The postal inspector further informed the defendant's wife that she could be arrested and her child would be placed in child protective services if drugs were found in the house.³⁸ The Third Circuit held the wife voluntarily gave consent to search.³⁹ Despite the defendant's argument to the contrary, the Third Circuit explained the postal inspector's statements did not invalidate the wife's consent, because the inspector simply provided the wife with accurate information regarding the current situation, as well as the possible consequences she might face if she did not cooperate.⁴⁰

The Court finds *Henderson* to be persuasive. The exchange between the police and Ms. Talton is very similar to the encounter in *Henderson*. When the police determined Ms. Talton had outstanding warrants, they were well within their discretion to arrest her. The officers

³⁶ 437 Fed.Appx. 96 (3rd Cir. 2011).

³⁷ *Id.* at 97-98.

³⁸ *Id.* at 98.

³⁹ *Id.* at 99.

⁴⁰ *Id.*

simply informed Ms. Talton of the current situation, that she had outstanding capiases, and two possible outcomes: one with her cooperation and the other if she refused the officers' entry. Therefore, since the officers only informed her of the current situation and the way in which they would exercise their discretion, Ms. Talton, like the defendant's wife in *Henderson*, was not coerced into giving consent to search her house.

For the foregoing reasons, the Defendant's Motion to Suppress Evidence that was seized from Ms. Talton's apartment is **DENIED**.

IV. Conclusion

For the reasons stated above, the Defendant's Motion to Suppress Evidence is **DENIED**.

IT IS SO ORDERED.

_____/s/_____

M. Jane Brady
Superior Court Judge