



### **SUMMARY**

In this Motion to Suppress by Defendant, the facts are essentially in no dispute. The original question presented is whether a police officer may testify about additional facts not contained within the sworn affidavit of probable cause to arrest (the “arrest warrant”) at a suppression hearing. Delaware case law supports Defendant’s contention that this Court should limit its review of the sufficiency of probable cause to arrest to the four corners of the affidavit. Yet, applying the “four corners test,” the affidavit in this case appears sufficient in itself for the issuance of the arrest warrant. Therefore, Defendant’s Motion to Suppress is **DENIED**.

### **FACTS AND PROCEDURES**

On July 24, 2014, Detective Scott Hurd (“Detective Hurd”) received information from a confidential informant that Deangelo McGlotten (“Defendant”) would be in the parking lot of the T.G.I. Friday’s restaurant on South DuPont Highway in Dover, Delaware, driving a Jeep Wrangler with an amount of heroin inside. On that same day, Dover Police observed a Jeep Wrangler enter the specified parking lot. The police recognized and later confirmed the driver to be Defendant. Upon a search of Defendant’s vehicle, police found 1300 bags of heroin weighing approximately 19.5 grams in total. Later that same day, Detective Hurd obtained a warrant for Defendant’s arrest from the Justice of the Peace Court. The arrest warrant was issued based upon Detective Hurd’s sworn affidavit

recounting the informant's tip and the events which had occurred earlier that day.<sup>1</sup> Defendant was subsequently indicted on charges of: (1) Aggravated Possession; (2) Drug Dealing; and (3) Possession of Drug Paraphernalia.

### **DISCUSSION**

Defendant moves to suppress drug evidence seized following his arrest on the grounds that the police lacked probable cause to arrest. At the hearing on Defendant's Motion to Suppress, the defense objected to testimony by Detective Hurd which contained information not in the original sworn affidavit. Pursuant to the "four corners test" of *McDonald v. State*,<sup>2</sup> the defense reasoned that the Court could not

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<sup>1</sup> The affidavit reads:

"Your affiant DETECTIVE Hurd can truly state that:

- 1) Detective Scott Hurd can truly state that your affiant is a Sworn Law Enforcement Officer in the State of Delaware, Kent County and is employed by the City of Dover Police Department. Your affiant is currently assigned to the Dover Police Departments Drug, Vice and Organized Crime Unit.
- 2) On Thursday, July 24, 2014 I received information from a confidential informant that Deangelo McGlotten, black male, date of birth 09/17/1985 was going to be in the parking lot of TGI Friday's, 222 South DuPont Highway, Dover, Delaware with an amount of heroin.
- 3) Surveillance units monitored the parking lot and observed Deangelo McGlotten, black male, date of birth 09/17/1985 driving a silver Jeep bearing Pennsylvania registration JMB1457.
- 4) Contact was made w/ the vehicle and located suspected heroin inside same.
- 5) The suspected heroin was transported to Dover Police Department where it was counted and processed.
- 6) The total amount of heroin was 1330 bags/19.5 grams and tested positive.
- 7) From my training, knowledge and experience the amount of heroin (Tier 5 offense) is consistent with the sale of same.
- 8) Deangelo McGlotten, black male, date of birth 09/17/1985 was identified by a Delaware ID card."

<sup>2</sup> 947 A.2d 1073 (Del. 2008).

properly rely upon that additional testimony in its probable cause review. The original issue before this Court, therefore, is whether a police officer may testify at a suppression hearing to information not contained within the original affidavit supporting the arrest warrant.

Defendant's argument relies on the "four corners test" articulated by the Delaware Supreme Court in *McDonald*. In *McDonald*, the court limited probable cause review of a challenged vehicle stop to the four corners of the arrest warrant affidavit.<sup>3</sup> There, the defendant moved to suppress drug evidence obtained as a result of a vehicle stop, arguing that the stop violated his Fourth Amendment rights.<sup>4</sup> Specifically, the defendant claimed that the arresting officer did not have probable cause, based solely on an alleged turn signal violation, to stop the vehicle from which the evidence was seized subsequently.<sup>5</sup> Because the alleged traffic violation did not provide a sufficient basis for stopping the vehicle, the court found no probable cause existed at the time of the stop.<sup>6</sup> The court held that the stop was unreasonable and violated the defendant's Fourth Amendment rights.<sup>7</sup> Therefore, the court concluded that the trial court erred in denying defendant's motion to suppress.<sup>8</sup>

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<sup>3</sup> *Id.* at 1078.

<sup>4</sup> *Id.* at 1076.

<sup>5</sup> *Id.* at 1076-77.

<sup>6</sup> *Id.* at 1079.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 1080.

The four corners test appears frequently in case law to support the principle that reviewing courts should consider only that information contained in the underlying affidavit in their probable cause review. In *Pierson v. State*,<sup>9</sup> the Delaware Supreme Court limited probable cause review of a challenged search to the four corners of the search warrant affidavit.<sup>10</sup> The court explained that the Delaware criminal code “contemplate[s] a ‘four-corners’ test for probable cause; sufficient facts must appear on the face of the affidavit so that a magistrate’s personal knowledge notwithstanding, a reviewing Court can verify the existence of probable cause.”<sup>11</sup> The court cautioned that in applying the test, “one looks only to the ‘facts recited in the complaint.’”<sup>12</sup>

Similarly, in *Gardner v. State*,<sup>13</sup> the Delaware Supreme Court reiterated the four corners test as a guiding principle for probable cause review and clarified when the test is applied. The court explained that “[t]he test for determining the establishment of probable cause is applied when the evidence seized under the warrant is subject to a motion to suppress.”<sup>14</sup> In *State v. Gillis*,<sup>15</sup> the Delaware

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<sup>9</sup> 338 A.2d 571 (Del. 1975).

<sup>10</sup> *Id.* at 573.

<sup>11</sup> *Id.*

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

<sup>13</sup> 567 A.2d 404 (Del. 1989).

<sup>14</sup> *Id.* at 411.

<sup>15</sup> 1990 WL 18284 (Del. Super. Ct. Feb. 16, 1990).

Superior Court further refined the boundaries of the four corners test. The *Gillis* court emphasized that “the sufficiency of probable cause must be determined solely from the information contained within the four corners of the affidavit itself.”<sup>16</sup> The court added that “[o]ral statements by the requesting officer not contained in the affidavit *may not be considered* in the determination of probable cause.”<sup>17</sup>

As these cases make clear, the four corners test has broad application. The test applies to the suppression of evidence obtained pursuant to a warrant based on probable cause.<sup>18</sup> The test determines whether an affidavit demonstrates probable cause to issue either an arrest warrant or a search warrant.<sup>19</sup>

The four corners test also prescribes precise limits. Under the test, we are concerned with only those facts appearing on the face of the affidavit.<sup>20</sup> Neither a magistrate’s personal knowledge nor an arresting officer’s additional statements to the judge should contribute to the probable cause determination for an arrest warrant.<sup>21</sup> A reviewing court should limit its determination of the existence of probable cause at the time of a warrant’s issuance to that limited information

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<sup>16</sup> *Id.* at \*5.

<sup>17</sup> *Id.* (emphasis added).

<sup>18</sup> 567 A.2d at 411.

<sup>19</sup> 947 A.2d at 1078 (citations omitted).

<sup>20</sup> 338 A.2d at 573; 567 A.2d at 411; 1990 WL 18284 at \*5.

<sup>21</sup> 338 A.2d at 573; 567 A.2d at 411; 1990 WL 18284 at \*5.

appearing on the affidavit's face.<sup>22</sup> Under Delaware law, "[p]robable cause exists where the facts and circumstances within the arresting officer's knowledge, of which he has trustworthy information, are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed."<sup>23</sup>

Applying the four corners test here, the Defendant was arrested based on probable cause. What minimal additional testimony Detective Hurd gave at the suppression hearing had no bearing on this Court's review of the facial validity of the arrest warrant.<sup>24</sup> Detective Hurd received a confidential informant's tip that a named individual of specified race and age would appear in a particular location in a precise make and model of car which would contain illegal drugs. At the time of Defendant's arrest, the police had probable cause to believe that criminal, drug-related offenses had been committed by the Defendant, based on both the informant's tip and the events that transpired subsequently confirming that tip. Because the arrest warrant was supported by facts sufficient to establish probable cause, Defendant's Motion to Suppress is **DENIED**.

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<sup>22</sup> 338 A.2d at 573; 567 A.2d at 411; 1990 WL 18284 at \*5.

<sup>23</sup> *Stafford v. State*, 59 A.3d 1223, 1229 (Del. 2012).

<sup>24</sup> Defense counsel promptly objected to Detective Hurd's testimony at the suppression hearing after his first and only answer deviating from information contained within the arrest warrant. Detective Hurd's answer added detail to the arrest warrant in only one respect, identifying the precise amount of heroin which the confidential informant indicated would be found. The arrest warrant already specified on its face that heroin would be and in fact was found in Defendant's possession.

*State v. McGlotten*  
*Case I.D. No. 1407020198*  
*October 23, 2015*

**CONCLUSION**

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED**.  
**IT IS SO ORDERED.**

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/s/ Robert B. Young  
J.

RBV/lmc  
oc: Prothonotary  
cc: Counsel  
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