

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

STATE OF DELAWARE

v.

OMAR J. SCOTT,

Defendant.

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ID# 1305026230

Submitted: January 28, 2014
Decided: February 11, 2014

OPINION

Upon Defendant's Motion to Suppress – **GRANTED**

Nicholas R. Wynn, Esq., Attorney for the State of Delaware.

Sean A. Motoyoshi, Esq., Attorney for the Defendant.

I. INTRODUCTION

Before the Court is Defendant Omar Scott's Motion to Suppress a prescription bottle containing 36 oxycodone pills that was removed from his cargo shorts pocket by the police. As explained below, although the Court finds the police had reasonable articulable suspicion to detain Scott pursuant to 11 *Del. C.* § 1902, they violated his Fourth Amendment rights when they conducted a pat down without a reasonable articulable suspicion that Scott was armed and dangerous. Consequently, the motion to suppress is **GRANTED**.

II. FACTS

On May 31, 2013, at approximately 2:20 p.m., Officer Fox ("Fox") of the City of Wilmington Police Department ("WPD"), while viewing Downtown Visions cameras, observed a black male wearing a white tank top, yellow shorts, and a pink baseball cap, loitering and engaging in what he believed to be hand-to-hand drug transactions in the vicinity of 10th and Pine Streets.¹ Fox contacted WPD Master Corporal Press ("Press") by radio and relayed what he had observed via the Downtown Visions cameras.² Press and his partner, who were in the area on another matter,³ responded to 10th and Pine within minutes, exited their marked patrol car, and observed an individual fitting the perpetrator's description.⁴ Press

¹ Jan. 15, 2014 Supp. Hrg. Trans. ("Tr.") 4:21-6:6; 12:11-14.

² *Id.* 5:2-6:6.

³ *Id.* 5:1-13.

⁴ *Id.* 6:7-14.

and his partner approached Scott⁵ and asked if they could speak to him; Scott agreed.⁶ Press then directed Scott to “get on the wall,”⁷ began patting Scott down, and then asked whether Scott had anything on him that “could possibly be illegal.”⁸ Scott replied, “No, nothing illegal, but I have prescription medications.”⁹ During the pat down, Press felt what he believed to be a medicine bottle in Defendant’s cargo shorts pocket and removed it.¹⁰ The bottle was prescribed to Chenelle Exxom and contained 36 oxycodone pills.¹¹ The police took Scott into custody because the pills were not prescribed to him.¹²

III. DISCUSSION

“An individual’s right to be free from unlawful searches and seizures in Delaware is secured by two independent, though correlative sources.”¹³ The Fourth Amendment of the United States Constitution protects against unreasonable searches and seizures.¹⁴ Article I, § 6 of the Delaware Constitution further secures

⁵ Press and his partner were in uniform. Tr. 6:23-7:1; 15:7-11.

⁶ *Id.* 7:7-9.

⁷ This means the suspect is to place his hands on a wall so the police can pat him down. Tr. 30:14-15; 37:1-11.

⁸ *Id.* 7:19-20. There is no evidence in the record that Press or his partner were concerned in any way about their safety. There is no evidence that they feared Defendant or had a concern he was armed. There is no mention of a pat down for officer safety in the police report. *Id.* 17:15-17. As noted earlier, Press and his partner were in a marked patrol car. *Id.* 15:20-21. In addition to their patrol car, there were approximately five patrol cars in Defendant’s vicinity blocking in his car. *Id.* 30:1-5. The other patrol cars happened to be there because of a “warrant attempt in that area.” *Id.* 5:2-5; 30:2-7.

⁹ *Id.* 7:1-4; 8:2-3; 16:23-17:7.

¹⁰ *Id.* 8:10-15; 38:17-22.

¹¹ *Id.* 8:17-19.

¹² At the suppression hearing, Press was unable to recall when Defendant gave his name to the police. According to Press, “...when we first made contact with him, he may have gave it to us or he may have had his ID on him....” When asked whether Defendant gave his name immediately when the police asked to speak with him or after the fact, Press said he could not recall. Tr. 18:2-21.

¹³ *Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

¹⁴ *See Terry v. Ohio*, 392 U.S. 1, 8 (1968).

its citizens' rights, providing that "[t]he people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures [...]"¹⁵ Therefore, in order for an officer to stop or detain an individual for investigatory purposes, the officer must possess "reasonable articulable suspicion to believe the individual detained is committing, has committed, or is about to commit a crime."¹⁶ While such a stop constitutes a seizure, it is more limited in scope and duration than an arrest and is, therefore, a reasonable intrusion under the Fourth Amendment.¹⁷

On a motion to suppress, the State bears the burden of establishing that the challenged search or seizure comported with the rights guaranteed by the United States Constitution, the Delaware Constitution, and Delaware statutory law.¹⁸ The burden of proof is by a preponderance of the evidence.¹⁹ Here, Scott argues that the WPD lacked reasonable articulable suspicion to stop him and failed to establish the reasonable basis necessary to justify a *Terry* pat down.

¹⁵ Del. Const. art. I, § 6.

¹⁶ *See Terry*, 392 U.S. at 30.

¹⁷ *Id.* at 30-31.

¹⁸ *State v. Matos*, 2001 WL 1398585 at *1, * 2 (Del. Super. Oct. 2, 2001) (Slights, J.).

¹⁹ *Id.*

The Detention

Pursuant to 11 *Del. C.* § 1902, police officers may forcibly stop and detain a person if they have reasonable suspicion of criminal activity on the part of that person.²⁰ A determination of reasonable suspicion is “evaluated in the context of the totality of circumstances to assess whether the detaining officer had a particularized and objective basis to suspect criminal activity.”²¹ The totality of the circumstances of the surrounding situation is “viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer’s subjective interpretation of those facts.”²² Thus, when determining whether reasonable suspicion exists to justify a detention, the court “defers to the experience and training of law enforcement officers.”²³

Press was told by a fellow police officer, Detective Fox that he observed the Defendant engage in what he thought were hand-to-hand drug transactions. Fox immediately radioed Press, described what he saw and provided Defendant’s exact location with a detailed description of Defendant’s clothing. Within minutes, Press

²⁰ *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989), *cert. denied*, 493 U.S. 1027 (1990). 11 *Del. C.* § 1902 provides:

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person’s name, address, business abroad and destination;

(b) Any person so questioned who fails to give identification or explain the person’s actions to the satisfaction of the officer may be detained and further questioned and investigated;

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

²¹ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1288 (Del. 2008).

²² *Id.*; *Harris v. State*, 806 A.2d 119, 127 (Del. 2002); *Woody v. State*, 765 A.2d 1257, 1263 (Del. 2001); *Jones*, 745 A.2d at 861.

²³ *Woody*, 765 A.2d at 1262.

located Defendant where Fox had observed him on camera, and Defendant's clothing exactly matched the description provided by Fox.²⁴

In determining whether there was reasonable suspicion to justify the detention, the Court defers to the experience and training of law enforcement officers.²⁵ Fox is a detective with the WPD. Press has worked for the WPD for almost 15 years. Fox observed Defendant engage in hand-to-hand drug transactions and relayed his observations to Press via official police lines.²⁶ The WPD acted on more than an "inchoate or unparticularized suspicion or hunch."²⁷

Examining the totality of the circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, and combining objective facts with the officers' subjective interpretation of those facts, the Court finds the police had a reasonable, articulable suspicion that Defendant was selling drugs at 10th and Pine Streets. Pursuant to 11 *Del. C.* § 1902, the detention was valid.²⁸

²⁴ Like in *Lofland v. State*, 834 A.2d 826 (Del. 2003) (TABLE), the police here observed a specific act committed by a particular individual which was indicative of an illegal drug transaction.

²⁵ *Woody*, 765, A.2d at 1262.

²⁶ See *Thomas v. State*, 8 A.3d 1195, 1198 (Del. 2010) ("This Court has recognized that an arresting officer is 'entitled to rely on information relayed to him through official channels' [...]").

²⁷ *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989).

²⁸ *Thomas*, 8 A.3d at 1198 ("[A] police officer may conduct a *Terry* stop of an individual who matches the description of a suspect provided to the officer either by a reliable informant or over a police radio broadcast."); see also, *Moody v. State*, 907 A.2d 146, 2006 WL 2661142, at *3 (Del. Aug. 24, 2006) (TABLE) (finding reasonable articulable suspicion to stop the defendant because, among other things, he was loitering in restaurant that was a known "open-air drug market" and was standing within feet of a person police observed conducting drug transactions).

The Pat Down

Having determined that the police were justified in detaining Defendant, the Court must now determine whether Press was justified in conducting a *Terry* pat down. Absent an exception, warrantless searches are presumed invalid.²⁹ The *Terry* pat down search for weapons is one exception, arising “when circumstances give the officer justification to believe that the individual is armed and presently dangerous.”³⁰ While the test for “justification” is “whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger,” the intrusion must be founded upon “the officer’s ability to point to *specific* and *articulable facts*.”³¹ The pat down is intended to permit an officer to “pursue his investigation without fear of violence,” and not to pursue evidence of a crime.³²

Here, while the initial stop of Defendant was valid, the pat down was not supported by a reasonable articulable suspicion that Defendant was armed and dangerous. While Press maintained that he conducted a pat down on Defendant for

²⁹ *Caldwell*, 770 A.2d 522, 531 (Del. 2001) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993)).

³⁰ *Terry*, 392 U.S. at 24.

³¹ *Caldwell*, 770 A.2d at 531. According to 11 *Del. C.* § 1903:

A peace officer may search for a dangerous weapon any person whom the officer has stopped or detained to question as provided in § 1902 of this title, whenever the officer has reasonable ground to believe that the officer is in danger is the person possesses a weapon. If the officer finds a weapon, the officer may take and keep it until the completion of the questioning, when the officer shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

³² *Woody*, 765 A.2d at 1266 (quoting *Adams v. Williams*, 407 U.S. 143, 145-46 (1972)).

“officer safety,”³³ there is no evidence to create a reasonable suspicion that Defendant was armed and presently dangerous.³⁴ The pat down occurred during midday and there is no evidence in the record that 10th and Pine Streets is an area known for high drug activity.³⁵ Defendant was alone, outnumbered by police, and his vehicle was blocked in.³⁶ Defendant was cooperative and appropriate with the police.³⁷ There is no evidence in the record that Fox or Press thought Defendant had a gun or a weapon on his person, and there is no explanation as to why Press felt his safety was threatened. Simply stated, the State has failed to meet its burden of establishing under the totality of the circumstances that a reasonably prudent officer would be justified in fearing for his own safety as well as the safety of his partner.³⁸

³³ See Tr. 8:10-12 (“you know, I did a safety check on him but – you know, officer safety pat down”); 17:13 (“We pat him down for officer safety”); 40:16-17 (“Well, he – here’s the thing, I’m worried about my safety”); 43:7-11 (“So it’s more of an officer safety thing to be confronting someone face to face. I don’t know what Mr. Scott may have on him. I have to worry about my partner’s safety, my safety and his own safety”).

³⁴ See *Jones*, 745 A.2d at 872, n. 78. Important here, *Jones* held that an officer’s claim that a search was conducted for “officer safety” cannot always validate the governmental intrusion. *Id.* Finding that an officer “needs an articulable suspicion[] appropriate to the circumstances,” the *Jones* Court followed the Seventh Circuit’s explanation that:

...while officer safety is both legitimate and weighty, it cannot in all circumstances justify a search or seizure. Otherwise nearly any invasion of a person’s privacy could be justified by arguing that the police needed to protect themselves from harm. *Id.* (internal citations omitted).

³⁵ See *State v. Henderson*, 892 A.2d 1061, 1065 (Del. 2006) (finding the officer did not have reasonable suspicion that the defendant was armed and presently dangerous because (1) the frisk occurred midday, (2) it was not an area known for high drug activity, (3) police outnumbered the defendant, (4) the defendant’s vehicle was blocked in, (5) the defendant’s hands were on the vehicle as instructed, and (6) the defendant was cooperative).

³⁶ *Id.*

³⁷ *Id.*

³⁸ Cf. *Matos*, 2001 WL 1398585 at * 3-4.

IV. CONCLUSION

Having determined that the pat down search of Defendant was unlawful, the Court need not reach the next issue of whether Press' seizure of the prescription pill bottle from Defendant's pocket was constitutional.

For the reasons stated above, the Motion to Suppress is **GRANTED**.

Judge Jan R. Jurden

cc: Prothonotary