IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	**ID NO. 1405023793**
v.	:	
	:	
FAMOUS B. RHOADES,	:	
	:	
Defendant.	:	

Submitted: November 14, 2014
Decided: November 26, 2014

Upon Consideration of Defendant's
Motion to Suppress
GRANTED

ORDER

Gregory R. Babowal, Esquire, Deputy Attorney General, Department of Justice, Dover, Delaware for the State of Delaware.

Patrick J. Collins, Esquire, Patrick Collins & Assoc., LLC, Wilmington, Delaware for Defendant.

Young, J.

State v. Rhoades
Case I.D. No. 1405023793
November 26, 2014

SUMMARY

In this case, Famous Rhoades ("Defendant") was the passenger in a vehicle, detained by officers of the Governor's Task Force, resulting in what is known as a "*Terry* stop." One of his fellow passengers was found to have evaded two capiases, as well as to have been in the possession of drug paraphernalia. Following this discovery, the officers proceeded to search the Defendant, finding cocaine and other contraband. Defendant argues that the officers violated his Fourth Amendment rights, as they did not have a reasonable, articulable suspicion for conducting this search. By his Motion to Suppress, Defendant seeks to exclude the items confiscated during this search. By his motion to suppress, Defendant seeks to exclude the items confiscated during this search.

The U.S. Supreme Court and the Delaware Supreme Court have both strongly stated that the search of an individual's outer clothing, known colloquially as a "pat-down", is justified only in the event there is a reasonably perceived threat to officer safety. In reviewing the circumstances surrounding this search, the Court is not persuaded that a reasonable officer would have believed that the Defendant was armed or dangerous. As such, the pat-down was unlawful. Therefore, Defendant's Motion to Suppress is **GRANTED**.

FACTS AND PROCEDURES

On May 27, 2014, Corporal Ballinger of the Governor's Task Force, stopped a dark green Grand Prix that was driving down South State Street in Dover, DE, after noticing that one of its headlights was broken. The vehicle was occupied by three persons: Kendall Evans, the driver, and two passengers, Defendant, who was in the

front passenger seat, and David Heath, who was the rear passenger. Corporal Ballinger ran background searches on all of the occupants, determining that Heath had two outstanding capiases. Ballinger was joined by at least three other officers[1], who proceeded to search Heath, finding two crack cocaine pipes. Evans gave the officers permission to search the car, where they found a billy club, located in the pocket at the rear of the driver's seat. Defendant was asked to exit the car, and the officers conducted a "pat-down" search of his person. The officers recovered powder cocaine, crack cocaine, marijuana, money and a cell phone from Defendant. During his direct testimony, Corporal Ballinger revealed that the motivation behind this search resulted from routine protocol. Following this Court's hearing, the Defendant moved to suppress these found items from entering into evidence.

DISCUSSION

The facts underlying Defendant's Motion to Suppress require this Court to strike a delicate balance between the interests of law enforcement and the rights afforded citizens of Delaware by the U.S. Constitution. Specific to this situation, this Court must weigh the interest of furthering the work of the Governor's Task Force, which seeks, among other things, to root out probation violations, against the Constitutional protection from unlawful search and seizure, in the case of a "pat-down" search.

Although the parties cite to only Delaware case law, this Court recognizes that

[1] The parties' motions identify these individuals as Sergeant Hake, Corporal O'Leary, and PO Ramsburg.

the protection from unreasonable search and seizure, deriving from the Fourth Amendment, was first extended to "pat-down" searches by the U.S. Supreme Court in *Terry v. Ohio*.[2] Indeed, the factual circumstances that underlie the Defendant's motion are today referred to as a *"Terry* stop."[3] The issue faced by the *Terry* Court was the permissibility of a stop and a search, where a police officer lacks probable cause for an arrest. The Court determined that the answer to this question required a two step analysis: "whether the officer's action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the inference in the first place."[4] In answering these two points, the U.S. Supreme Court announced the "reasonable, articulable suspicion" standard, requiring that an officer's motivation leading to the pat-down search be based on specific facts, rather than a mere "hunch." [5]

Specific to both the *Terry* circumstances and the ones at the case at bar, prior to conducting a search of the stopped person's outer garments, the officer must, based upon articulable facts, be reasonably suspicious that this person is armed and dangerous.[6] There must be a justifiable concern that the individual will cause harm

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[2] 392 U.S. 1 (1968).

[3] *See e.g.,* Charles B. Vincent, *An Analysis of the Shift-in-Purpose Approach to Fourth Amendment Jurisprudence in Delaware*, 13 DEL. L. REV. 95 (2012).

[4] *Terry*, 392 U.S. at 19-20.

[5] *Id.*, at 27.

[6] *Id.* (officer must "ha[ve] reason to believe that he is dealing with an armed and dangerous individual...").

to the officers or others in the vicinity.[7] Absent these factors, such a search is deemed unconstitutional, violating the Fourth Amendment protection against unreasonable search and seizure.[8]

Delaware courts have taken up this issue on several occasions, to which the parties cite. The "reasonable, articulable standard," has been further developed by these Delaware cases in three significant ways. First, and perhaps most relevant to Defendant's position, the Delaware Supreme Court in *Caldwell v. State* held that where a traffic stop is followed by a search of an occupant's outer clothing, these two events are deemed separate seizures.[9] As such, these separate seizures require separate articulable facts supporting each search.[10] It is not enough that the officer had reasonable suspicion to detain the vehicle.[11]

Second, as regards the suspicion necessary to pat-down an individual's outer garments, the Delaware Supreme Court has clarified that the impetus must be narrowly limited to the reasonable belief that the individual is armed and dangerous.[12]

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[7] *Id.* at 29 ("[t]he sole justification of the search in the present situation is the protection of the police officer and others nearby...").

[8] *Id.,* at 19-20 (court reasoning that the crux of case was whether officer's stop and search was "reasonable" and if not, the Fourth Amendment had been violated).

[9] 780 A.2d 1037, 1047 (Del. 2001) ("any investigation of the vehicle or its occupants beyond that required to complete the purpose of the traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion").

[10] *Id.*

[11] *Id.*

[12] *Holden v. State*, 23 A.3d 845 (Del. 2011).

Officer safety in the broad sense, cannot be used as a catchall justification for the pat-down.[13] Furthermore, the Delaware Supreme Court has distinguished the reasonable suspicion of a threat to officer safety from the suspicion of criminal activity generally.[14] Finally, the Delaware Supreme Court expanded upon the *Terry* stop in *Abel v. State,* where it elucidated that the suspicion was specific to the individual frisked.[15]

By his Motion to Suppress, Defendant seeks a proclamation that the routine protocol of frisking each occupant of a stopped vehicle violates the constitutional protection against unlawful search and seizure. The crux of Defendant's argument is that, when conducting the frisk, the officers lacked the reasonable, articulable suspicion that he was armed or dangerous. The evidence endured that, at the time the officers searched his person, they had already run a background check on him, which revealed he was neither a parole violator, nor a wanted criminal. Further, the initial reason for the stop was a broken headlight. Both of those circumstances failed to involve officer safety – particularly the possibility of Defendant's being armed.

The Prosecution's argument is largely based upon factually distinguishing

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[13] *Id.*, at 850 ("the constitution does not condone routine pat downs without any reasonable suspicion that the officer's personal safety requires).

[14] *State v. Dollard*, 788 A.2d 1283, 1287 ("[t]o justify this pat-down search, Detective Jones could not rely simply upon the reasonable, articulable suspicion that Dollard was committing a crime...he must also reasonably have believed that Dollard was armed and dangerous") (internal quotations omitted).

[15] 68 A.3d 1228, 1233 (Del. 2012) (articulable facts must be "*specific to the person frisked"*)(emphasis in the original).

some of the cited Delaware case law – namely *Holden* – which this Court does not find persuasive. That the Defendant in the *Holden* case attempted to walk away from the scene, while the Defendant in the instant matter did not, strikes the Court as wholly irrelevant. The focus in a *Terry* challenge is whether the officers reasonably believed that the individual was carrying a weapon, and thus, justifiably searched his person. As is supported by the *Holden* Court, evasion of the police is not, in and of itself, dispositive of whether reasonable suspicion exists.[16] The Prosecution's strongest argument, therefore, is that there was a billy club found within the vehicle. This could, under certain circumstances, constitute a reasonable, articulable fact leading to a justified fear of an armed individual.

Delaware, however, requires that the circumstances be viewed in their totality, not individually.[17] That being said, the Court does not believe that, at the time Defendant was searched, the officers had the requisite level of suspicion necessary to justify the search of his person. The U.S. Supreme Court and the Delaware Supreme Court have both made clear that, not only must there be reasonable, articulable suspicion to conduct a pat-down, but further, any search is limited in scope

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[16] *See Holden*, 23 A.3d at 849 ("[m]oreover, merely leaving the scene upon approach or sighting of the police is not, in itself, suspicious conduct").

[17] *Id.*, at 847 ("[i]n determing whether reasonable articulable suspicion exists, we must examine the totality of the circumstance surrounding the situation...")(internal quotation omitted); *see also U.S. v. Drayton*, 536 U.S. 194, 207 (2002) (holding that the Fourth Amendment in the *Terry* stop context requires a consideration of the "totality of the circumstances" with respect to the existence of reasonable articulable suspicion).

to that which is reasonably related to this suspicion.[18] In the case at bar, as in *Caldwell,* two seizures occurred. The first was the stopping of the car and the search of its interior. The second was the frisking of the Defendant. All parties agree that it was permissible for the officers to stop and search the vehicle.[19] There was a broken headlight, and the officers' background search revealed capias evasion. Yet, it was at this point, that the officers' actions ceased to be reasonably related to the original suspicion. The officers could not provide any reason for frisking Defendant, other than that it was "protocol."[20] As the Delaware Supreme Court has articulated, however, "[a]llowing routine pat down searches would eviscerate *Terry's* requirement that the pat down be based on particularized suspicion developed by the officer with respect to each individual suspect."[21]

The only factor that the Prosecution raises, that may be argued to have understandably caused the officer's suspicion, is the location of a billy club in the driver's side seat pocket. Yet, as Defendant rightfully stresses, the instrument (which as far removed from Defendant as was possible in that vehicle) was neither photographed, nor taken into evidence by the police officers. What's more, no

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[18] *See Terry*, 392 U.S. 1; *Caldwell*, 780 A.2d 1037.

[19] *See e.g., Holden*, 23 A.3d at 847("[a] police officer who observes a traffic violation has probable cause to stop the vehicle and its driver. During a lawful traffic stop, a police officer may order both the driver and its passengers out of the vehicle pending completion of the stop") (citing *Whren v. U.S.*, 517 U.S. 806, 810 (1996); *Maryland v. Wilson*, 519 U.S. 408, 415 (1997)).

[20] *See* Ex. A to Defendant's Motion at 11.

[21] *Holden*, 23 A.3d at 850 (internal quotations omitted).

weapons charges arose from the officers' locating the club. Had any concern resulted from the sighting of the club, the officers would have, presumably, reacted in some way. Instead, it appears the club was ignored. In all likelihood, the true reason Defendant was searched, was because the background check on his fellow occupant revealed capias evasion. The officers also found contraband on this other occupant, possibly prompting them to search the Defendant. That was improper. The suspicion must be specific to the individual searched.[22] The suspicion must also not be of criminal activity in general, such as that resulting from Heath's missed capiases, or the fact that drug paraphernalia was discovered on Heath's person.[23] The circumstances, taken in their totality, would not cause a reasonable officer to suspect Defendant was armed or dangerous. The officers' search was, therefore, unconstitutional. The items recovered from the search of Defendant's person are inadmissible. Defendant's Motion to Suppress this evidence is **GRANTED**.

CONCLUSION

The Fourth Amendment protects citizens from unlawful search and seizure. This protection has been extended, by the U.S. Supreme Court in *Terry*, to situations in which an officer lacks probable cause for an arrest, but nonetheless detains a suspect for some period of time. A search is warranted only in a narrow set of circumstances: the officer must reasonably believe, and be able to articulate specific, factual support for this belief, that the individual is armed or dangerous. In the instant

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[22] *See Abel,* 68 A.3d at 1233 (articulable facts must be "*specific to the person frisked"*)(emphasis in the original).

[23] *Dollard*, 788 A.2d at 1287.

matter, the Court finds that the officers who searched Defendant, lacked such reasonable suspicion. Defendant's motion is **GRANTED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

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