

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

STATE OF DELAWARE,)
)
 v.)
)
 ANGELICA L. BABB,)
 (ID. No. 1108025102))
)
 Defendant.)

Submitted: February 27, 2012
Decided: June 13, 2012

Nicole Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for State.

Kathleen K. Amalfitano, Esq., Public Defender's Office, Dover, Delaware. Attorney for Defendant.

Upon Consideration of Defendant's
Motion to Suppress Evidence
GRANTED

VAUGHN, President Judge

ORDER

Upon consideration of the defendant's Motion to Suppress Evidence, the State's opposition, and the record of the case, it appears that:

1. The defendant, Angelica L. Babb, has been charged in an 11 count indictment with Trafficking In Cocaine, Possession of a Firearm During the Commission of a Felony, Possession with Intent to Deliver a Narcotic Schedule II Controlled Substance, Possession of Firearm Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession with Intent to Deliver a Non-Narcotic Schedule I Controlled Substance, Maintaining a Vehicle for Keeping Controlled Substances, Possession of a Narcotic Schedule II Controlled Substance, Possession of Drug Paraphernalia, Possession of a Non-Narcotic Schedule I Controlled Substance, and Possession of a Firearm by a Person Prohibited.

2. On August 31, 2011, at about 20 minutes after midnight, the defendant was a front seat passenger in a motor vehicle being driven in Harrington, Delaware by William Preston. There were two other passengers in the back seat. After the vehicle proceeded through the intersection of Delaware Avenue and Route 13, a Harrington police officer started to follow it. The officer was on the lookout for DUI's. After the Preston vehicle crossed over lane lines a few times, the officer stopped the vehicle for failing to remain in a single lane. After the officer approached the driver, he ceased having any suspicion of DUI, but did begin to ask some questions. He decided that the answers were not adding up. For example, the driver said that they had just come from McDonald's, but the officer observed only Dunkin

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Donuts boxes and bags in the car. The officer also believed that the answers the driver gave were inconsistent with the vehicle's direction of travel. The officer then checked for any outstanding warrants for the driver and the three passengers, but there were none. The vehicle was properly registered and Preston had a proper driver's license. The officer asked Preston to step out of the car and asked him why they were coming off of Delaware Ave. Preston told him his brother had gotten into a fight with his girlfriend. The officer completed filling out a ticket for failing to remain in a single lane. While the ticket was still in the officer's possession, he asked Preston for consent to search the vehicle. Preston gave consent. Because the officer was alone, he informed all of the four occupants that he was going to bring each person out of the car one at a time and pat them down. The defendant was wearing a sun dress with no bra, and the officer elected not to pat her down. But he asked to search a large purse in her possession. The officer contends the defendant willingly opened the purse. I find, however, that the defendant had not consented to be searched. There was a smaller bag within the larger bag that the defendant was moving around inside of the larger bag as the officer searched it. The officer was able to see the butt of a gun in the small bag. He took the defendant into custody and went through the rest of the bag, finding 8.74 grams of cocaine and a black handgun. The defendant has moved to suppress the cocaine and the black handgun.

3. "As a general rule, the burden of proof is on the defendant who seeks to

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suppress evidence.”¹ However, once the defendant has established a basis for his motion, the burden shifts to the government to show that the search or seizure was reasonable.² “The burden of proof on a motion to suppress is proof by a preponderance of the evidence.”³

4. A police officer may stop an individual for investigatory purposes if he has a reasonable, articulable suspicion that the person is committing, has committed, or is about to commit a crime.⁴ Reasonable suspicion is defined as the officer's ability “to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrants the intrusion.”⁵ In determining whether reasonable, articulable suspicion exists, we “must examine 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, combining objective facts with such an officer's subjective interpretation of those facts.”⁶ An officer is justified

¹ *State v. Caldwell*, 2007 WL 1748663, at *2 (Del. Super. May 17, 2007) (quoting *U.S. v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995)).

² *Caldwell*, 2007 WL 1748663, at *2 (citing *Johnson*, 63 F.3d at 245).

³ *State v. Abel*, 2011 WL 5221276, at *2 (Del. Super. Oct. 31, 2011) (quoting *State v. Iverson*, 2011 WL 1205242, at *3 (Del. Super. March 31, 2011)).

⁴ *Abel*, 2011 WL 5221276, at *2 (citing 11 *Del. C.* § 1902).

⁵ *Holden v. State*, 23 A.3d 843, 847 (Del. 2011) (quoting *State v. Henderson*, 892 A.2d 1061, 1064-65 (Del. 2006)).

⁶ *Id.* (quoting *Jones v. State*, 745 A.2d 856, 861 (Del. 1999)).

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in “frisking” an individual only if the officer has properly detained the individual,⁷ and has a reasonable, articulable suspicion that the individual is armed and presently dangerous.⁸ “In the absence of either such conditions, a police officer may not conduct a pat-down search without violating the defendant's statutory and constitutional rights against unreasonable search and seizure.”⁹

5. The Delaware Supreme Court has recently held that after police officers finish a traffic stop, they cannot continue to detain the vehicle’s occupants without reasonable suspicion of criminal behavior.¹⁰ “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.”¹¹

6. In this case the traffic stop was finished when the police officer finished writing the ticket. One course of action would have been to hand the ticket to the driver and let the vehicle proceed on its way. The course of action which occurred here, continued detention and investigation of the vehicle occupants, was not justified unless the officer had a reasonable and articulable suspicion of criminal activity.

7. Although the driver’s answers were not “adding up” in the officer’s

⁷ *Hicks v. State*, 631 A.2d 6, 9-10 (Del. 1993).

⁸ *Holden*, 23 A.3d at 847.

⁹ *Hicks*, 631 A.2d at 9-10.

¹⁰ *Murray v. State*, 2011, 2012 WL 1696994, at *2 (Del. May 14, 2012).

¹¹ *Id.* (quoting *Caldwell v. State*, 780 A.2d 1037, 1047 (Del. Sept. 13, 2001)).

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mind, I find that he did not have an independent, reasonable, and articulable suspicion of criminal activity apart from the reason for the traffic stop. I also find that the defendant continued to be detained throughout the encounter.

8. Since the officer continued to detain the car and occupants without a reasonable and articulable suspicion of criminal activity after the traffic stop was completed, it follows from the afore-mentioned recent Supreme Court decision that the evidence seized must be suppressed.

9. For these reasons, the defendant's Motion to Suppress is ***granted***.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr

President Judge

oc: Prothonotary
cc: Order Distribution
File