

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

STATE OF DELAWARE,)
)
 v.)
)
TIMOTHY SMITH.)

ID. No. 1301018432

ORDER

On this **16th day of October** and upon Defendant Timothy Smith’s (“Defendant”) Motion to Suppress, brought by counsel, the Court finds that:

Defendant moved to suppress evidence seized from a warrantless administrative search of his residence and statements made as “fruits” of the unlawful search. The search was conducted after Officer Daniel Collins (“Officer D. Collins”) received information from Officer Larry Collins, based on a tip that Officer Larry Collins received, that Defendant would be selling narcotics in a specific vehicle and location during a certain time period. Defendant argues that Probation and Parole lacked reasonable suspicion for the search and that there is no information demonstrating the informant’s reliability. Defendant also raises a “stalking horse” argument based on the Delaware Constitution.¹ For the following reasons, Defendant’s motion is **GRANTED**.

¹ “A probation officer acts as a stalking horse if he conducts a probation search on prior request of and in concert with law enforcement officers. However, collaboration between

Findings of Fact

Officer D. Collins has been employed by Delaware Probation and Parole for about eight years. For the last three years, he has been assigned to “Operation Safe Streets,” a program in which the Wilmington Police Department works alongside Probation and Parole. Although Officer D. Collins works with Probation and Parole, his office is located within the Wilmington Police Department.

On January 24, 2013, Officer Larry Collins (“Officer Larry Collins”) informed Officer D. Collins that a confidential informant, who was past-proven reliable, stated that Defendant would be selling illegal narcotics from a dark grey Jeep Cherokee in the parking lot of the Longshoreman’s Hall, located in Wilmington, between 6 a.m. and 7 a.m. The informant also stated that, once defendant ran out, he would go back home. Officer D. Collins did not personally speak to the informant.

Officer D. Collins performed a background check on Defendant and discovered that he was a Level III probationer residing at 402 8th Street in Wilmington, owned a grey Jeep Cherokee, and was employed at the Longshoreman’s Hall. Surveillance was established at Defendant’s home and the

a probation officer and police does not in itself render a probation search unlawful.” *United States v. Williams*, 417 F.3d 373, 377 (3d Cir. 2005)(quoting *United States v. Watts*, 67 F.3d 790, 794 (9th Cir.1995). In *Williams*, the Third Circuit rejected stalking horse arguments brought under the U.S. Constitution. *Id.* at 377-78.

back road leading into the Longshoreman's Hall parking lot, which was about ten minutes away from Defendant's home. Officer D. Collins did not obtain any other information relating to the residence.

On the morning of January 26, 2013, Defendant was observed sitting alone in the Jeep for forty-five minutes while it was running. Defendant was not observed engaging in any hand-to-hand transactions. At 7:15 a.m., Defendant left the lot and arrived at home about ten minutes later. Defendant entered the home and, at 7:30 a.m., Defendant exited his home and re-entered the Jeep. After he entered the Jeep, officers approached him and placed him into custody. Officers performed a pat-down, but Defendant was unarmed and did not have any contraband.

Officer D. Collins immediately contacted his supervisor, Craig Watson, via cell phone for a case conference. During the conference, he explained that Defendant was in the same car and location during the same time that the informant described to Officer Larry Collins and that he sat in the lot for about forty-five minutes. An "Arrest/Search Checklist" was completed which indicated that Defendant was "believed to possess contraband" and that the "information from informant is corroborated."² Thereafter, an administrative search of the

² Court's Ex. 1.

residence and a vehicle in the attached garage revealed incriminating evidence and Defendant made certain incriminating statements during an interview with police.

Discussion

“A State's operation of a probation system [...], presents “special needs” beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements.”³ Based on this rationale, the search of a probationer’s home will be considered reasonable if it is conducted pursuant to a valid regulation governing probationers.⁴ So long as probation officers substantially comply with Department of Corrections (“DOC”) regulations and have “reasonable suspicion” to search a probationer’s dwelling, the search will be valid.⁵ “Reasonable suspicion” exists when “ under the totality of the circumstances, the officer [has] a particularized and objective basis for suspecting legal wrongdoing.”⁶

³ *Griffin v. Wisconsin*, 483 U.S. 868, 873-74 (1987).

⁴ *United States v. Knights*, 534 U.S. 112, 113 (2001).

⁵ *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008); *Pendleton v. State*, 990 A.2d 417, 420 (Del. 2010).

⁶ *State v. Jacklin*, 2010 WL 3707425, at *3 (Del. Super. Sept. 22, 2010).

Pursuant to DOC Probation and Parole Procedure 7.19,⁷ in the absence of exigent circumstances, the probation officer must first hold a case conference with his or her supervisor, using a Search Checklist as a guideline.⁸

During the case conference the supervisor will review the “Yes” or “No” responses of the officer to the following search decision factors:

- (1) Sufficient reason to believe the offender possesses contraband.
- (2) Sufficient reason to believe the offender is in violation of probation/parole.
- (3) Information from a reliable informant, indicating offender possesses contraband or is violating the law.
- (4) Information from the informant is corroborated.⁹

The Procedure also requires probation officers to independently evaluate the reliability of informants to determine if reasonable suspicion exists to search a probationer’s home with the use of the following four-part test: “was [1] the information detailed, [2] consistent, [3] was the informant reliable in the past, and [4] [] the reason why the informant is supplying the information.”¹⁰

The Supreme Court acknowledged and applied this four-part test in *Culver v. State*, 956 A.2d 5 (Del. 2008), a case in which a state police officer relayed information, obtained from an anonymous caller, to a probation officer that a defendant was engaged in drug activities. In *Culver*, the anonymous caller

⁷ The adoption of Probation and Parole Procedure 7.19 is authorized under *11 Del. C.* §4321(d).

⁸ *Culver v. State*, 956 A.2d 5, 10 (Del. 2008).

⁹ *Id.* (quoting Probation and Parole Procedure 7.19).

¹⁰ *Id.* at 10-11.

provided the defendant's physical description and the address of defendant's residence. The caller concluded that a Mercedes Benz was used for drug activities based on the caller's observations of patterns of vehicle activity at the residence. The police officer conducted surveillance and observed two men exit a rental vehicle, enter the home, and leave in the Benz with the defendant and another individual. When another officer stopped the Benz and conducted a search of the vehicle and its occupants, no incriminating evidence was discovered. Nevertheless, the officer relayed the tip and his observations, which he believed to be suspicious, to a probation officer who then received authorization from his supervisor to conduct an administrative search of the defendant's residence.¹¹

The Court determined that the tip lacked sufficient detail to justify the search of the residence because it was not received firsthand by the probation officer and there was no indication that the caller had any personal knowledge that defendant possessed drugs.¹² In addition, the Court found that the police officer's surveillance added no additional information to corroborate the assertion of drug activity.¹³ As to whether the tip was consistent, the Court stated

the caller's description of [the defendant], and activity observable from the street, were not enough to provide a basis to find that the tip provided reason to believe that [the defendant] was engaged in illicit

¹¹ *Id.* at 8-9.

¹² *Id.* at 11.

¹³ *Id.* at 12.

drug activity. The tip was based on readily observable facts that demonstrated no special insight into illegal activity.¹⁴

The Court noted that the fruitless search of the Benz and its occupants showed that the tip was inconsistent¹⁵ and that there was nothing in the facts suggesting that the caller was past-proven reliable.¹⁶

In other cases where the Supreme Court has considered the reliability of an informant's tip to determine the lawfulness of a search, the Court has held that "the accurate prediction of future movements adequately corroborates a tip even from an anonymous informant."¹⁷ The Court has explained that "[c]orroboration of an informant's tip about a suspect's movements suggests that the informant possesses knowledge of the suspect's criminal behavior, because the informant knows the person well enough to know what they will do."¹⁸ In *Fuller v. State*, 844 A.2d 290 (Del. 2004), the Court found that a tip from a past proven reliable informant informing police that a "probationer of a certain description was selling drugs in a particular area and driving a vehicle of a certain description" provided reasonable grounds to believe the probationer was violating probation and to justify an

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 12-13; The Court also stated that there was no information provided regarding the caller's intent. *Id.* at 13.

¹⁷ *State v. Holden*, 60 A.3d 1110, 1116 (Del. 2013) (citing *Cooper v. State*, 32 A.3d 988, 2011 WL 6039613, at *6 (Del. Dec. 5, 2011) (TABLE)); see also *Morgan v. State*, 962 A.2d 248, 252-53 (Del. 2008).

¹⁸ *Id.* at 1116.

administrative search of a vehicle.¹⁹ The Court found that the tip was corroborated when the officer located the vehicle in the same general area described, saw that the driver matched the description, and confirmed that the car was registered to the probationer.²⁰

In this case, the Court finds that the tip lacked sufficient reliability to support Officer D. Collins' reasonable suspicion to search Defendant's residence because it was not adequately corroborated. Had the Defendant's vehicle been searched while he was sitting in the Longshoreman's Hall parking lot, the Court would be inclined to follow the rationale in *Fuller* and find that the tip was corroborated when Defendant was located in the same location and vehicle during the same time provided by the informant. However, the search at issue here was an administrative search of Defendant's residence, which did not occur until after Defendant was observed sitting alone in his Jeep for forty-five minutes without engaging in any hand-to-hand transactions. In addition, a search of Defendant's person did not reveal any contraband. Like the tip in *Culver*, the tip here containing "information purporting to form a basis to believe that [Defendant] was involved with drugs was *inconsistent* with the further, follow up investigation."²¹

¹⁹ *Fuller*, 844 A.2d at 292-93.

²⁰ *Id.* at 293.

²¹ *Culver v. State*, 956 A.2d 5, 12 (Del. 2008).

Because the Court finds that the tip was not sufficiently corroborated in order to justify the administrative search of Defendant's residence, the Court will does not reach the "stalking horse" issue.

Conclusion

For the aforementioned reasons, Defendant's Motion to Suppress is
GRANTED.

IT IS SO ORDERED.

/s/Calvin L. Scott
Judge Calvin L. Scott, Jr.