

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

STATE OF DELAWARE,)	
)	
)	
)	
v.)	ID. No. 1309003133
)	
ALLEN CHRISTOPHER,)	
)	
Defendant.)	

ORDER

AND NOW, TO WIT, this 17th day of March, 2014, **IT IS HEREBY ORDERED** as follows:

Introduction

Before the Court is Defendant Allen Christopher’s (“Defendant”) Motion to Suppress. Defendant seeks to suppress evidence contained inside envelopes seized during a search of Defendant’s backpack. Defendant challenges the search and seizure of the items inside the envelopes for violation of his rights guaranteed by the Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Delaware Constitution. The Court has reviewed the parties’ submissions and held a suppression hearing. For the following reasons, Defendant’s motion is **DENIED**.

Findings of Fact

On September 4, 2013 at approximately 11:50 p.m., Corporal Johnson and Corporal Larney (“Cpl. Larney”) arrived at a rest-stop on I-95 in response to a report that a passenger, who was later determined to be Defendant, threatened a bus driver with a firearm. Upon the officers’ arrival, the driver explained that, after instructing Defendant to put his shoes on and sit properly, Defendant responded with racially offensive language. In addition, the driver stated that Defendant warned the driver to mind his business or there would be trouble while patting his side as if he had a firearm.

Defendant was inside the rest-stop and was escorted out to speak to police by the rest-stop’s manager, who was carrying Defendant’s backpack. One of the officers conducted a pat-down of defendant. In addition, the officers searched the bus and surrounding area, but did not find any weapons. Cpl. Larney explained the driver’s allegations to Defendant and Defendant denied having a firearm. The manager handed Cpl. Larney the backpack. Cpl. Larney asked Defendant whether he could search the backpack and defendant agreed.

While searching the backpack, Cpl. Larney discovered clothes and three standard letter-sized white envelopes. One of the envelopes was partially ripped in the top corner, which enabled Cpl. Larney to see a credit

card in plain view. When Cpl. Larney felt the envelope, he believed the rest of the items in the envelope to be more credit cards. Cpl. Larney then asked Defendant what the envelopes contained and Defendant stated that they contained “business documents.” Cpl. Larney believed this response to be odd because the items did not feel like documents. Cpl. Larney repeated his question, Defendant appeared nervous. Without further ripping the envelope, Cpl. Larney then manipulated the contents with one or two fingers and discovered that the other items were multiple drivers’ licenses. At no time did Defendant indicate that Cpl. Larney’s was not permitted to search the envelopes.

Cpl. Larney then asked for Defendant’s identification and Defendant provided a Pennsylvania driver’s license. Although the license contained Defendant’s photograph, certain characteristics led Cpl. Larney to believe the license was unofficial. Cpl. Larney then placed Defendant under arrest and handcuffed Defendant based on suspicion of a fraudulent ID card and menacing. Thereafter, Cpl. Larney opened all three envelopes which contained a total of 75 credit cards and 9 identification cards. At the suppression hearing, Cpl. Larney testified that when an individual is arrested and carrying a bag, he typically will inventory the contents of the bag.

Discussion

Defendant moves to suppress the evidence seized from the envelopes on the ground that they were outside of the scope of Defendant's consent to search his backpack. Defendant argues that, while he consented to the search of the backpack, the consent was limited to searching for a firearm, which would not have fit inside the envelopes.¹ Because the Court finds that the envelopes were searched as part of a valid search incident to arrest, the Court does not reach the issue of consent. Alternatively, the search of the envelopes would have been inevitably discovered through an inventory search.

When a defendant moves to suppress a search or seizure on U.S. and Delaware constitutional grounds, the burden is on the State to prove by a preponderance of evidence that the challenged search or seizure was conducted in accordance with the defendant's constitutional rights.² In the absence of exigent circumstances, a warrantless search is *per se* unreasonable unless a valid exception applies.³ Exceptions to the warrant requirement include:

investigatory stops, warrantless arrests, searches incident to a valid arrest, seizures of items in plain view, searches and seizures justified

¹ Defendant initially moved to suppress his statements because he was not read his *Miranda* warnings during all times relevant to this motion, but defense counsel conceded that there was no longer a *Miranda* issue.

² *State v. Banner*, 2011 WL 7054606, at *2 (Del. Super. Dec. 22, 2011).

³ *Scott v. State*, 672 A.2d 550, 552 (Del. 1996).

by exigent circumstances, consent searches, searches of vehicles, inventory searches, administrative searches, and searches in which the special needs of law enforcement make the probable cause and warrant requirements impracticable.⁴

Under the search incident to arrest exception, “immediately upon arrest an officer may lawfully search the person of an arrestee; he may also search the area within the arrestee's immediate control.”⁵ The Delaware Supreme Court stated, in *Coley v. State*,

The United States Supreme Court justified the search incident to arrest exception when it stated that ‘[a] custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification ... it is the fact of the lawful arrest which establishes the authority to search.’ Generally, a search incident to an arrest follows the valid arrest. This Court, however, following the United States Supreme Court stated, ‘where the arrest and search are nearly contemporaneous, the search may precede the arrest, so long as the police do not use the search to establish probable cause for the arrest.’⁶

In *State v. Johnson*,⁷ this Court applied the search incident to arrest exception when a police officer searched a bag belonging to a defendant who was believed by a 911 caller to be carrying a gun. The defendant was searched and no weapons were found; however, the officer subsequently

⁴ *Williams v. State*, 962 A.2d 210, 216 n. 20 (Del. 2008).

⁵ *Illinois v. Lafayette*, 462 U.S. 640, 644 (1983)(internal citations omitted).

⁶ *Coley v. State*, 2005 WL 2679329, at *1, 886 A.2d 1277 (Del. 2005)(TABLE)(quoting *United States v. Robinson*, 414 U.S. 218, 235 (1973)).

⁷ *State v. Johnson*, 2011 WL 300247 (Del. Super. Jan. 18, 2011).

learned that the defendant had outstanding *capias*.⁸ After placing the defendant under arrest, the officer searched the defendant's bag and discovered marijuana and a bottle containing liquid codeine. Since the Court found that the decision to arrest was made after and solely based upon the discovery of the outstanding *capiases*, the Court also found that "it [was] reasonable to conclude from the officer's testimony that [...] the search is justified as incident to a lawful arrest."⁹ In *State v. Garvey*, this Court found that a search of a defendant's gym bag was proper because it "was within the arrestee's immediate control" and "done immediately after Defendant's arrest."¹⁰

The inevitable discovery exception "provides that evidence, obtained in the course of illegal police conduct, will not be suppressed if the prosecution can prove that the incriminating evidence 'would have been discovered through legitimate means in the absence of official misconduct.'"¹¹ In *Cook v. State*, the Delaware Supreme Court applied this principle to currency found after a weapons frisk of two defendants

⁸ *Id.* at *1.

⁹ *Id.* at * 2.

¹⁰ *State v. Garvey*, 2006 WL 1495786, at * 4 (Del. Super. May 25, 2006) *aff'd* *Garvey v. State*, 925 A.2d 503 (Del. 2007).

¹¹ *Cook v. State*, 374 A.2d 264, 267-68 (Del. 1977)(quoting *Comment, The Inevitable Discovery Exception to the Constitutional Exclusionary Rules*, 74 Col. L. Rev. 88, 90 (1974)).

suspected to be involved in an armed robbery.¹² The Court stated, “[t]he record indicates that, subsequent to an arrest, an inventory search at the police station [...] was a routine procedure. In the course of that search, the money found on [the two defendants] would have been discovered; its discovery, therefore, was ‘inevitable.’”¹³

Although the Court applied the doctrine of inevitable discovery in *Cook*, the decision also illustrates the effect of the inventory search exception. That exception allows the police, “as part of the routine procedure for incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures.”¹⁴ “It is well established that the police may open closed containers, such as a bag, during an inventory search.”¹⁵ Under this exception, the Delaware Supreme Court has upheld the unfolding and reading of papers seized during an inventory search conducted pursuant to Wilmington Police Department policy for “seizing, cataloging and storing [of] an arrested person’s ... papers [.]”¹⁶

¹² *Id.* at 267-68.

¹³ *Id.* at 268.

¹⁴ *Taylor v. State*, 822 A.2d 1052, 1055 (Del. 2003)(quoting *Lafayette*, 462 U.S. at 648).

¹⁵ *Id.* at 1056.

¹⁶ *State v. Deputy*, 2001 WL 1729120 (Del. Super. Dec. 20, 2001)(citing *Colorado v. Bertine*, 479 U.S. 367, 370 (1987)).

When Cpl. Larney opened and searched all three of the envelopes, that search constituted a valid search incident to arrest. As *Johnson* and *Garvey* demonstrate, Cpl. Larney could properly search the bag and the envelopes inside immediately after he arrested Defendant for the fraudulent identification and menacing. As stated above, a “search may precede the arrest, so long as the police do not use the search to establish probable cause for the arrest.”¹⁷ Defendant was arrested for suspicion that the identification that he presented to Cpl. Larney was fraudulent and for menacing; therefore, it does not appear that Cpl. Larney used the cards that he initially viewed in the first envelope to establish probable cause for the arrest. Even if viewing and moving the cards inside the first envelope prior to Defendant’s arrest was improper, Cpl. Larney would have inevitably discovered the cards once he arrested Defendant and conducted a search incident to arrest. Furthermore, Cpl. Larney testified that he typically inventories the contents of bags when a defendant is arrested while carrying one. Thus, the items in the three envelopes would have been also inevitably discovered as part of a routine inventory search.

¹⁷*Coley*, 2005 WL 2679329 at *1.

Conclusion

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

IT IS SO ORDERED.

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