

This matter is presently before the Court on defendant's motion to suppress evidence.

For the reasons that follow, the motion is DENIED.

I. FACTS

On March 4th, 2004, Probation Officer William DuPont (hereinafter "DuPont") and Wilmington Police Officer David Rosenblum (hereinafter "Rosenblum") received information from a confidential informant that a black male in his mid-twenties, who lived in the 1000 block of Lombard Street, was operating a green Ford Explorer in that area and was a drug supplier for the 900 block of Clifford Brown Walk.¹ Responding to this information, DuPont and Rosenblum located a green Ford Explorer, parked but running, in front of 910 Clifford Brown Walk.² The vehicle was occupied by one black male, who appeared to be in his mid-twenties, and there were two unknown men leaning into the driver side window of the vehicle. As DuPont and Rosenblum approached, the two unknown men immediately backed away from the vehicle and the Explorer quickly sped off. At that point, at approximately 12:15 a.m., DuPont and Rosenblum conducted a traffic stop of the vehicle. The driver of the vehicle was Jerrel Curtis, (hereinafter "Curtis") a Level III probationer with a 10:00 p.m. curfew, who was assigned to Wilmington's Probation and Parole Office's Drug Unit.

Based on these facts, DuPont contacted his supervisor, Pat Cronin, (hereinafter "Cronin")

¹ DuPont testified that Lombard Street and Clifford Brown Walk are considered to be high-drug crime areas, in particular for open-air heroin and crack cocaine sales and that he personally has participated in numerous drug and weapons arrests in that area.

² DuPont testified that approximately one or two weeks prior to this occasion he had observed a hand-to-hand drug transaction in front of 910 Clifford Brown Walk and had chased the subject through that residence into the alleys behind.

who authorized an administrative search of Curtis' residence.³ While authorizing the search, Cronin informed DuPont that two additional suspects, both with outstanding arrest warrants, were also registered with the same home phone number as Curtis' residence. Cronin also warned DuPont that during a previous administrative search of Curtis' residence, other probationers and wanted suspects had been found to occupy the apartment and a sawed-off shotgun had been discovered as well.

After arriving at Curtis' residence with back-up officers, DuPont knocked on the door for several minutes but no one answered. DuPont finally used a key belonging to Curtis to enter the residence. As he entered, DuPont and the other officers proceeded to clear the apartment by identifying themselves loudly to alert any occupants of their presence. DuPont testified that the purpose for clearing the apartment is strictly to determine who is present in the dwelling for reasons of officer safety. As the officers made their way through the apartment, a female, who identified herself as Sharon Curtis, emerged from a hallway and advised DuPont that her two children and boyfriend also occupied the residence. DuPont continued to check the apartment and found the defendant lying in bed in a back bedroom with the blankets pulled up all the way to his neck covering his entire body. DuPont ordered defendant to remove the covers, which revealed that the defendant was fully clothed. Next, DuPont ordered the defendant to stand up, which he did. But as the defendant did so, he began to reach for his pocket. DuPont ordered the defendant to keep his hands in the air, however, the defendant attempted to push past DuPont. At this point, DuPont noticed a bulge in defendant's waistband that appeared to be a handgun.

³ The Court notes that Curtis resides at 1032 North Lombard Street, Apartment B, consistent with the informant's information.

Consequently, assisting officers took the defendant into custody and discovered a firearm in the defendant's waistband. A subsequent CJIS check revealed that the defendant had an outstanding *capias* for a violation of probation and that he was also wanted for failure to pay in the Court of Common Pleas, New Castle County and in Justice of the Peace Court #20.

Thereafter, on April 5, 2004, defendant was indicted on charges of Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of Drug Paraphernalia and Possession of a Non-Narcotic Schedule I Controlled Substance. Defendant filed the present motion to suppress on May 27, 2004 and a hearing was held on July 23, 2004. At the conclusion of the hearing, the Court requested that the parties submit post-hearing Memoranda of Law supporting their respective arguments.

II. DISCUSSION

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.⁴ The burden on a motion to suppress is by a preponderance of the evidence.⁵

Defendant contends that the administrative search of probationer Curtis' residence violated defendant's Fourth Amendment Constitutional rights against unreasonable searches and seizures and therefore all evidence discovered during the search should be suppressed. This case

⁴ *Hunter v. State*, Del Supr. No. 279, 2000 Steel, J. (August 22, 2001) (Mem. Op. at 5-6).

⁵ *State v. Bien-Aime* Del.Supr. Cr. A. No. IK92-08-326, Toliver, J. (March 17, 1993) (Mem.Op.)

is somewhat unique in that it is not the probationer himself who challenges the search, but rather an occupant of the probationer's residence.⁶ Nevertheless, the crucial issue remains the same. That is, whether or not DuPont had the Constitutional authority to conduct the administrative search of Curtis' residence and therefore was lawfully present when he encountered defendant.

With regard to Fourth Amendment searches, the United States Supreme Court has stated that a search must be undertaken pursuant to a warrant and supported by probable cause, thus setting the general standard for a search to be protected.⁷ However, the Court has also held that there are exceptions to this general standard "when special needs, beyond normal need for law enforcement, make the warrant and probable-cause requirement impracticable."⁸ For example, the Supreme Court stated that such "special needs" include "a State's operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry."⁹ The Supreme Court went on to state that in order to accommodate these "special needs," a State's probation and parole officers must be permitted to impinge upon a probationer's privacy that would otherwise not be constitutional if applied to the general public.¹⁰

⁶ As a preliminary matter, the Court notes that the record is unclear as to whether the defendant was also a resident at the apartment or was merely an overnight guest of Sharon Curtis. In either case, as a resident or an overnight guest, his standing to raise this claim is not at issue. *See Hanna v. State*, 591 A.2d 158 (Del. 1991).

⁷ *Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S.Ct. 3164, 3169, 97 L.Ed.2d 709, 718 (1987)

⁸ *Id.*

⁹ *Griffin*, 483 U.S. at 873-74.

¹⁰ *Id.* at 875.

After all, inherent in the very nature of probation¹¹ is that probationers do not enjoy 'the absolute liberty to which every citizen is entitled but only ... conditional liberty properly dependent on observance of special [probation] restrictions.'¹² As a result, a probationer's expectation of privacy in his/her residence is less than that of an average citizen.¹³

Against this backdrop, the United States Supreme Court promulgated a lesser Fourth Amendment standard governing the protection of searches of probationer's homes. The Supreme Court held that a search conducted pursuant to a valid state regulation governing probationers, which required that there be "reasonable grounds" for a search, was sufficient to render the search reasonable under the Fourth Amendment.¹⁴ More recently, the Supreme Court reiterated and refined this lesser standard for probationers in *United States v. Knights*, wherein it held that no more than a "reasonable suspicion" was required for a probation officer to search a probationer's apartment.¹⁵

Presently, the Court must determine if there was sufficient evidence to afford DuPont with a reasonable suspicion that an administrative search of Curtis' residence would be proper under this lesser standard. As an initial determination, the Court notes that DuPont's compliance

¹¹ "Probation, like incarceration, is 'a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty and is merely one point ... on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service.'" *See id.* (quoting G. Killinger, H. Kerper, & P. Cromwell, *Probation and Parole in the Criminal Justice System* 14 (1976)).

¹² *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 480, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972)).

¹³ *State v. Redden*, 2003 WL 22853419 (Del. 2003).

¹⁴ *Griffin*, 483 U.S. at 876.

with the Department of Corrections' regulations pursuant to which he acted has not been raised, and therefore, is not addressed by this Court except to note that nothing in the record would indicate a lack of compliance to this Court.

Turning to the facts, DuPont had information from an informant that a black male in his mid-twenties; driving a green Ford Explorer; was dealing drugs to the 900 block of Clifford Brown Walk and lived on the 1000 block of Lombard Street. In corroboration of this information, DuPont located a black male in his mid-twenties; who lived on the 1000 block of Lombard Street; who was driving a green Ford Explorer in the 900 block Clifford Brown Walk; a known high drug-crime area, and specifically located him in the exact place where just one week prior he witnessed a hand-to-hand drug transaction. Additionally, the driver was a probationer assigned to the probation office's drug unit caught outside over two hours past his curfew. Finally, adding to the suspicious nature of these events, when DuPont approached the vehicle, it quickly sped off. The corroboration of the informant's information, together with the additional facts discussed above, compel a finding by the Court finds that DuPont had a reasonable suspicion that criminal activity was occurring. Hence, DuPont was justified in making the decision to conduct an administrative search of Curtis' residence to investigate further.

Having found that DuPont did indeed have the Constitutional authority to conduct an administrative search of Curtis' residence, it therefore follows that he was lawfully present at the residence when he encountered defendant. Defendant does not challenge the scope of the administrative search conducted and therefore the Court need not address that issue.

¹⁵ *U.S. v. Knights*, 534 U.S. 112, 121 (U.S. 2001)

Furthermore, this Court finds that DuPont was not engaged in a search of the back bedroom where defendant was encountered, but rather merely performing a protective sweep of the residence *prior to beginning his search* of the areas in which Curtis resided.¹⁶

The Court finds that the State has met its burden and shown by a preponderance of the evidence that DuPont had a reasonable suspicion sufficient to satisfy the lesser standard applicable to searches of probationer's homes and therefore the administrative search of Curtis' residence and all evidence seized pursuant to that search comported with the requirements of the Fourth Amendment.

For the foregoing reasons, defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

Jan R. Jurden, Judge

¹⁶ Officer DuPont testified as follows:

Q: So why would you want to search those rooms if they are not Mr. Jerrel Curtis' room?

A: Because while I'm searching the area that Mr. Curtis supposedly resides in, I don't want someone like your client, or somebody else, jumping out and shooting me in the back. We do it for officer safety.

Q: All right. So you're saying if you know somebody else's in their room, you're going to search it anyway for officer safety reasons, right? Even though it doesn't belong --

A: ...We didn't search the room. We were clearing the residence for officer safety.

See Tr. 7/23/04, Page 46 Line 11 to Page 47 Line 3. (emphasis added).