

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.) ID No. 1703019021
) In and for Kent County
)
 JERMAINE BOYD,)
)
 Defendant.)

Submitted: July 21, 2017
Decided: August 22, 2017

ORDER

Upon Defendant's Motion to File Motion to Suppress Out of Time

DENIED

Upon Defendant's Motion to Suppress

DENIED

The issue before the Court is whether to grant Jermaine Boyd's ("Defendant") Motion to File Out of Time and accept Defendant's untimely filed Motion to Suppress. For the reasons set forth below, Defendant's motions are DENIED.

FACTS AND PROCEDURAL BACKGROUND

1. On March 26, 2017, a Delaware State Police Officer observed a white Cadillac Escalade (the "Vehicle") change lanes without signaling and make an illegal left turn. The Officer pursued the Vehicle but lost track of it when the Vehicle entered a nearby neighborhood. The Officer eventually discovered the Vehicle parked in front of a residence located within the neighborhood. The Vehicle was unoccupied and the Officer was unable to locate the driver. The Officer observed a bottle of alcohol in the back seat of the Vehicle, as well as an odor of marijuana emanating from the Vehicle.

As the Vehicle was involved in numerous traffic violations, the Officer intended to have the Vehicle towed. In preparation for the towing, and as a result of the marijuana odor, the Officer conducted a brief search of the Vehicle. The Officer found a digital scale and firearm ammunition in the Vehicle's glove compartment. The Officer thereafter terminated the search in order to obtain a warrant. In a subsequent search of the Vehicle pursuant to the warrant, marijuana was discovered.

2. The Officer continued his investigation, whereby he identified Defendant as the probable driver of the Vehicle. Defendant disputed this fact, claiming that he did not operate the Vehicle on the date in question. Defendant also denied ownership of the Vehicle, but allegedly admitted that he left the ammunition discovered by the Officer in the Vehicle's glove compartment. Therefore, Defendant was charged with Possession of a Firearm or Ammunition By a Person Prohibited, as he had a prior felony conviction. Defendant was also charged with Possession of Marijuana.

3. On May 3, 2017, the Court issued a scheduling order setting forth the following: (1) the first case review was scheduled for June 13, 2017; (2) a final case review was scheduled for July 26, 2017; and (3) trial was scheduled for August 1, 2017. The scheduling order granted the parties twenty (20) days after the first case review to file motions related to discovery or suppression.

4. On July 6, 2017, twenty-three days after the first case review occurred, Defendant filed the disputed motion to suppress. Defendant, citing *Wong Sun v. United States*, contends that "evidence seized as the result of an unlawful search or seizure must be suppressed as the fruit of the illegal search or seizure."¹ Furthermore,

¹ *Wong Sun v. United States*, 371 U.S. 471 (1963).

3 Defendant cites *Caldwell v. State*, explaining that traffic stops by law enforcement are limited to the initial purpose of the stop.² Finally, Defendant argues that his state and federal constitutional rights were violated. Therefore, Defendant requests that the Court suppress all evidence seized as a result of the Officer's search of the Vehicle.

5. On July 12, 2017, Defendant, realizing that his motion to suppress was untimely, filed a motion to file his suppression motion out of time. In support of his Motion, Defendant contends that: (1) he mistakenly filed the motion after the Court's July 3, 2017, deadline; (2) he is being held on a high cash bond; and (3) "all of the Defendant's cases involve police officers witnesses [sic], no civilians."

6. On July 21, 2017, the Court held a hearing to determine whether to accept Defendant's untimely filed motion to suppress. Defendant's counsel clarified that the motion was filed after the Court's deadline because of a scheduling error. The State opposed Defendant's motion to file the suppression motion out of time. The State contends that the Court should deny Defendant's motion to suppress, not only because it is untimely, but also because it fails to allege that Defendant has standing. The Court reserved decision.

LEGAL STANDARD

7. Pursuant to Superior Court Criminal Rule 12(c), the Court is vested with authority to set the time for pretrial motions, either at the time of arraignment or "as soon thereafter as practicable"³ Accordingly, pursuant to this Court's criminal case management plan, pretrial motions including motions to suppress must be filed

² *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

³ Del. Super. Ct. Crim. R. 12(c).

within 10 days of the initial case review unless otherwise ordered by the Court.⁴ The Court “has broad discretion to enforce its rules of procedure and pre-trial orders.”⁵

8. The Court will not consider untimely motions to suppress unless the defendant provides the court with evidence of “exceptional circumstances” to justify the late filing.⁶ Exceptional circumstances exist when there are circumstances that warrant the Court’s consideration of the untimely motion, and those circumstances “outweigh the countervailing interest in ensuring the timely and orderly processing of the Superior Court’s criminal docket.”⁷ Exceptional circumstances will not be found when a defendant’s attorney possesses “all the relevant information necessary to support filing the motion.”⁸

DISCUSSION

9. The Court’s standard is clear: a defendant must allege an “exceptional circumstance” to justify a late filing.⁹ Defendant’s counsel in this matter, however, merely alleges that Defendant’s Motion to Suppress was untimely because of a scheduling error. A scheduling error is not considered an “extraordinary circumstance” because, as previously explained, exceptional circumstances will not

⁴ Kent County Criminal Case Management Plan at 5.

⁵ *Carney v. State*, 931 A.2d 436, 2007 WL 2254543, at *2 (Del. Aug. 7, 2007) (TABLE) (citing *Barnett v. State*, 691 A.2d 614, 616 (Del. 1997)).

⁶ *See id.*

⁷ *Miller v. State*, 3 A.3d 1098, 2010 WL 3328004, at *2 (Del. Aug. 24, 2010) (TABLE).

⁸ *State v. Greene*, 2014 WL 1155085, at *2 (Del. Super. Feb. 21, 2014) (citing *Carney*, 931 A.2d 436, 2007 WL 2254543 at *2).

⁹ *See Carney*, 931 A.2d 436, 2007 WL 2254543 at *2 (citing *Barnett*, 691 A.2d at 616).

be found when a defendant's attorney possessed "all the relevant information necessary to support filing the motion."¹⁰

10. The Court acknowledges that its decision may appear particularly harsh, as Defendant's Motion to Suppress exceeded the Court's deadline by only three days. However, the length of time between the expiration of the deadline and the filing of the motion is but a single factor considered by the Court. The ultimate decision rests on whether an "exceptional circumstance" exists. Since Defendant failed to allege an exceptional circumstance, Defendant's Motion to File Out of Time must be denied.

11. Even if the Court were to consider the merits of Defendant's untimely motion, the Motion to Suppress must still be denied because Defendant did not allege sufficient standing.

12. In *State v. Dunson*, this Court explained that:

To gain access to the law's exclusionary remedy for illegal searches or seizures, a defendant must have standing, which will be found if a defendant "has a legitimate expectation of privacy in the invaded place." A defendant carries the burden of demonstrating standing to challenge the search and seizure. Superior Court Criminal Rule 41(f) requires that a motion to suppress "set forth the standing of the movant."¹¹

13. After a careful review of Defendant's Motion to Suppress, it is apparent that Defendant failed to satisfy the standard set forth in *Dunson* because he did not

¹⁰ *Greene*, 2014 WL 1155085 at *2 (citing *Carney*, 931 A.2d 436, 2007 WL 2254543 at *2).

¹¹ *State v. Dunson*, No. 1612008614, at *3 (Del. Super. July 7, 2017) (internal citations omitted).

provide factual grounds to demonstrate his interest in the Vehicle. In fact, the police report, attached as Exhibit A to Defendant's motion, specifically provides that Defendant denied ownership of the Vehicle and denied operating the Vehicle on the date in question. As Defendant has not rebutted this contention, nor has he provided an alternate explanation for his interest in the Vehicle, he cannot claim a "legitimate expectation of privacy." Therefore, Defendant has neglected his obligation to allege standing and "further consideration of the motion is unnecessary."¹²

CONCLUSION

Defendant's Motion to File Out of Time is **DENIED**. Defendant's Motion to Suppress is therefore **DENIED** as untimely.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dsc

oc: Prothonotary
cc: Marie O'Connor Graham, Esquire
Jaime L. Walker, Esquire

¹² See *id.* at *2 (citing *State v. Small*, 2010 WL 2162898, at *1 (Del. Super. May 27, 2010)).