

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 v.) ID No. 1712004846
) In and for Kent County
RICHARD M. SMITH,)
)
 Defendant.)

ORDER

Submitted: May 31, 2018

Decided: June 11, 2018

***Upon Defendant's Motion to Suppress
DENIED***

On this the 11th day of June, 2018, having considered Defendant Richard Smith's (hereinafter "Mr. Smith") motion to suppress and the State's response, as well as the evidence and arguments of the parties presented at the hearing held May 31, 2018, the Court finds that the State has established probable cause to seize and search a red Acura (hereinafter the "Vehicle"), and the motion is **DENIED**.

The Court finds the facts of the case, by a preponderance of the evidence, to be as follows:

Mr. Smith is challenging the validity of the search and seizure of a red Acura and its contents that occurred in connection with the execution of a search warrant by the Delaware State Police (hereinafter "DSP") on the apartment of Damien Legrand (hereinafter the "Residence") in the early morning of December 8, 2017. On that date, DSP acquired a warrant to search the Residence in connection with the investigation of Mr. Legrand's alleged involvement in heroin dealing. DSP's investigation involved

controlled purchases from Mr. Legrand in which heroin branded “Patron” was obtained by law enforcement. Neither the warrant nor its affidavit of probable cause mentioned Mr. Smith or the Vehicle. When DSP officers entered the home, they discovered Mr. Smith sleeping on a couch. On a coffee table next to the couch, DSP discovered two cell phones. Beneath the couch, they recovered an empty gun case. Next to the couch, the officers observed a plastic storage cabinet, and therein discovered a bag of heroin branded “Werewolf,” and next to the heroin a set of car keys belonging to the Vehicle, which was parked outside. The officers ultimately determined that Mr. Smith was using the Vehicle. DSP officers seized the Vehicle and towed it to Troop 3, where it was later searched, and a firearm discovered inside.

During the hearing held May 31, 2018, the State’s witness, Detective Brock Dean, who investigated this matter, testified that Mr. Smith may have been previously involved in drug dealing. Detective Dean also testified that based on his training and experience, drug dealers and other criminals usually transport their drugs, guns, and money in vehicles. Detective Dean further testified that drug dealers often carry two cell phones, and borrow the vehicles of others to evade police detection.

In a suppression hearing, the Court sits as the finder of fact and evaluates the credibility of the witnesses.¹ The party with whom the burden rests must persuade the Court by a preponderance of the evidence.² Here the parties agree that the Vehicle was not seized pursuant to warrant. Because this was a warrantless search and seizure, the State bears the burden.³

¹ *State v. Hopkins*, 2016 WL 6958697, at *2 (Del. Super. Nov. 28, 2016).

² *State v. Lambert*, 2015 WL 3897810, at *3 (Del. Super. June 22, 2015).

³ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

The State sets forth the following grounds as supportive of probable cause to seize and search the Vehicle: (1) the Vehicle was parked outside an apartment in which police had observed “drug dealing activity;” (2) the Vehicle was being driven by Mr. Smith, who was known to Detective Dean as a “drug dealer in that area;” (3) Mr. Smith’s presence in the Residence suggested that he and the Vehicle might be involved in a drug transaction; (4) inside a storage cabinet beside the couch, DSP found heroin in direct proximity to the keys to the Vehicle; (5) an empty gun case was discovered under the couch; (6) two cell phones were discovered next to the couch; and (7) DSP knew, based on training and experience, that drug dealers often carry two cell phones, use vehicles to transport drugs and firearms, and borrow the vehicles of others to evade police detection.

A defendant who owns or exercises control over a vehicle has standing to seek suppression of evidence recovered from that vehicle pursuant to an unlawful search or seizure.⁴ Generally, police may seize and search a vehicle without warrant, provided they first obtain “probable cause to believe that an automobile is carrying contraband or evidence.”⁵ As an initial matter, the Court finds that Mr. Smith, through his reported statements and possession of the keys, exercised control over the vehicle and has standing to bring his motion.

Regarding probable cause to search the Vehicle, the Court considers the fact that the Vehicle was parked outside a residence associated with drug dealing to

⁴ *Mills v. State*, 900 A.2d 101 (Del. 2006).

⁵ *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985).

support a finding of a nexus to search the Vehicle.⁶ While the United States Supreme Court in *Ybarra v. Illinois* held that a “person’s mere propinquity to others independently suspected of criminal activity does not, *without more*, give rise to probable cause to search that person,” that principle, by extension, prohibits the search of vehicles whose only connection to a situs of illegal activity is their proximity to that situs.⁷ Consequently, while individually insufficient, this fact, when combined with an additional factor or factors, could support a nexus to search the Vehicle.

The Court finds that the discovery of the Vehicle’s keys in close proximity to the “Werewolf”-branded heroin is that additional factor that supports a nexus to search the Vehicle. While the Court, upon diligent review, discovered no case law or other legal authority addressing a similar circumstance, determinations regarding probable cause have been described by the United States Supreme Court to be “practical, common-sense” judgments.⁸ Through this lens, at least two possibilities appear to the Court as practical implications of the immediate proximity of the keys to illegal drugs. The first is that the heroin belonged to Mr. Legrand rather than Mr. Smith, and that Mr. Smith simply had the misfortune to place his keys into the storage cabinet next to the heroin before going to sleep. Another possibility is that the drugs belonged to Mr. Smith, and that he had brought both the drugs and the keys with him from the Vehicle into the Residence. This second possibility would suggest a nexus to the Vehicle, and would further suggest that evidence of additional drug contraband

⁶ See e.g., *U.S. v. Martinez*, 78 F.3d 399, 401 (8th Cir. 1996) (finding proximity of vehicle to residence involved in suspected drug dealing to be supportive of nexus to search the vehicle).

⁷ 444 U.S. 85, 91 (1979) (emphasis added).

⁸ *Illinois v. Gates*, 462 U.S. 213, 244 (1983).

would be found inside the Vehicle. The Court finds the second possibility to be more likely, as it appears that the “Werewolf”-branded heroin did not belong to Mr. Legrand—the heroin that law enforcement previously purchased from him was branded “Patron”—and therefore it appears probable that Mr. Smith brought this heroin and the keys into the Residence with him, placing both into the storage cabinet.

While the Court believes that the above two factors are sufficient to justify the search, the Court also finds the expert testimony offered by Detective Dean, indicating that he had reason to believe contraband was in the Vehicle, to be significant. An officer’s expert opinion that contraband is likely to be found in a given location is a factor supportive of a Court’s finding of a nexus to search a particular place.⁹ Specifically, Detective Dean opined that guns or contraband would be found in the Vehicle because he believed that Mr. Smith was a drug dealer or otherwise involved in drug crimes and that such persons often conceal drugs and weapons in their vehicles.

The Court considers Mr. Smith’s apparent possession of heroin, usage of two cell phones, presence in a house suspected of involvement in drug dealing, proximity to an empty gun case, and usage of a borrowed car to be sufficient to indicate that he was involved in drug crimes, when viewed in their totality.¹⁰ The reasonable inference

⁹ *Cannon*, 2007 WL 1849022, at *6.

¹⁰ The Court does not find Detective Dean’s testimony regarding his personal knowledge of Mr. Smith’s past involvement in drug crimes to be supportive of probable cause. Detective Dean’s answers regarding his recollection of Mr. Smith’s presence at a past drug deal were uncertain,

that Mr. Smith was involved in drug crime, when considered in combination with Detective Dean's expert opinion that persons involved in drug crimes are likely to secrete contraband in their vehicles, also satisfies the nexus requirement and justifies the search of the Vehicle. Therefore, the Court finds that the search and seizure of the Vehicle was lawful.

WHEREFORE, for the foregoing reasons, Defendant's motion to suppress is **DENIED**.

IT IS SO ORDERED.



Noel Eason Primos, Judge

NEP/wjs
oc: Prothonotary
cc: Lindsay A. Taylor, Esquire
Matthew C. Buckworth, Esquire

and given his own skepticism regarding his recollection, the Court gives that testimony no weight.