

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

V.

JAMIR GOLDSBOROUGH,

Defendant.

I.D. No. 2103017202

Date Submitted: July 20, 2022

Date Decided: August 23, 2022

On Defendant Jamir Goldsborough's Motion to Suppress. **DENIED.**

## ORDER

William H. Leonard, Jr., Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State of Delaware.

Alanna R. Farber, Esquire, Wilmington, Delaware, Attorney for Defendant.

**SCOTT, J.**

## **Introduction**

Before the Court is Defendant Jamir Goldsborough's ("Defendant") Motion to Suppress, brought by counsel. Defendant argues there was no probable cause for the warrantless arrest of Defendant and thus any evidence seized as a result of the unlawful arrest of Defendant must be suppressed. The State argues Defendant does not have standing to challenge the search as he does not own nor have a possessory interest in the car. Further, the State argues that even if Defendant has standing, the Officer lawfully opened the door of the vehicle acting as a Community Caretaker and the smell of marijuana in addition to Defendant concealing his hands underneath of a blanket warranted probable cause to search the vehicle. The Court has reviewed the motion and the State's response and held a suppression hearing. For the following reasons, the Defendant's Motion is **DENIED**.

## **Findings of Fact**

On March 31, 2021, at approximately 2:48 A.M., Officers of the New Castle County Police Department responded to Barrett Run Townhouses and Apartments after a 911 caller reported hearing screaming and a gunshot. Upon arrival, the first officer ("First Officer") on the scene and noticed a black Buick parked at the dead end of West Newtown Place, which was in the general area of where the shot was reportedly heard. The First Officer reported he saw a person laying across the backseat as he saw a foot through the front windshield of the Buick. Upon

approaching the Buick, the First Officer knocked on the window to get the attention of the passengers, after hearing no response, he opened the door. When he opened the door, he observed two occupants laid across the backseat of the vehicle under a blanket. At this point, another officer had arrived at the scene and witnessed the interaction between the First Officer and the occupants. The First Officer reported that immediately after opening the door, he detected a strong odor of burnt marijuana coming from inside the vehicle. The First Officer then asked the occupants, Defendant and Parys Henry (“Ms. Henry”) if they were okay because the police were called out because of a reported gunshot in the area. The First Officer then told Defendant and Ms. Henry to get out of the vehicle. Ms. Henry complied immediately and got out of the car. However, Defendant did not and stayed under the blanket in the car while Ms. Henry got out. First Officer observed Defendant moving his hands under the blanket after failing to comply with his request to get out of the vehicle. First Officer then ordered Defendant to show his hands several times and Defendant did not initially comply. After several commands, Defendant complied with officer’s order to show his hands and then complied with the initial order to get out of the vehicle. Defendant was detained and handcuffed.

Officers then conducted a search of the vehicle and found marijuana and a loaded firearm in the backseat concealed under a blanket.

Subsequently, on September 13, 2021, a grand jury indicted Defendant for Carrying a Concealed Deadly Weapon, Receiving a Stolen Firearm, and Possession of Marijuana. On April 25, 2022, after Defendant waived his First Case Review, he filed this Motion, challenging the constitutionality of police conduct and arguing the evidence seized from the Buick should be suppressed because the police did not have probable cause to search the vehicle or arrest Defendant.

The Court heard argument on this Motion on July 20, 2022.

### **Standard**

In a suppression hearing, the Court sits as the finder of fact, assesses witness credibility, and weighs the evidence.<sup>1</sup> Since the motion challenges a warrantless search, the burden is on the State to establish that there was probable cause to justify a warrantless search of a vehicle.<sup>2</sup> Under the automobile exception to the warrant requirement, the police must have probable cause to believe that an automobile is carrying contraband or evidence of a crime before they may lawfully search the vehicle without a warrant.<sup>3</sup> Probable cause is subject to a totality of the circumstances analysis. To establish probable cause, the police are required to assess whether there are “facts which suggest, when *those facts* are viewed under the

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<sup>1</sup> *State v. Dewitt*, 2017 WL 2209888, at \*1 (Del. Super. May 18, 2017).

<sup>2</sup> *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001) (emphasis omitted).

<sup>3</sup> *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985).

totality of the circumstances, that there is a fair probability that the defendant has committed a crime.”<sup>4</sup>

### **Discussion**

**I. Defendant has no standing to challenge the search of a vehicle because he is not an owner nor was he exercising control over it nor was he an overnight guest in the vehicle.**

*a. Defendant does not own, nor did he exercise control over the vehicle at the time of the search.*

A person only has standing to challenge evidence seized as a result of a violation of one's own constitutional rights.<sup>5</sup> The petitioner must demonstrate his own “legitimate expectation of privacy in the invaded place” before he may challenge the validity of a search or seizure.<sup>6</sup> For purposes of protection under the Fourth Amendment, automobiles are treated differently than houses.<sup>7</sup> A passenger who does not own or exercise control over a vehicle does not possess a reasonable expectation of privacy in the vehicle in which he is traveling.<sup>8</sup> Therefore, a mere passenger in a vehicle does not have standing to challenge a search.<sup>9</sup>

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<sup>4</sup> *Id.* (emphasis in original).

<sup>5</sup> *Mills v. State*, 2006 WL 1027202 (Del.Super. Apr. 17, 2006).

<sup>6</sup> *Wilson v. State*, 812 A.2d 225 (Del.2002) (citing *Rakas v. Illinois*, 439 U.S. 128 (1978)).

<sup>7</sup> *Rakas*, 439 U.S. 128.

<sup>8</sup> See *Mills*, 2006 WL 1027202; see *Rakas*, 439 U.S. 128.

<sup>9</sup> *Id.*

Because Defendant does not claim any possessory or proprietary interest in the car that was searched, Defendant lacks standing to attack the sufficiency of the search. The prevailing rule of standing was enunciated by the United States Supreme Court in *Rakas v. Illinois*.<sup>10</sup> The Court in *Rakas* stated that:

Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted. A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rule's protections.<sup>11</sup>

The Supreme Court held that a proponent of a motion to suppress has standing to contest the legality of a search and seizure only if he can assert either a property or a possessory interest in the areas searched on the property seized and if he can show a legitimate expectation of privacy in the areas searched.<sup>12</sup>

Defendant asserts neither a possessory nor a property interest in the automobile as Defendant does not own the vehicle nor was he exercising any control over it at the time of the search. Defendant has also failed to show that they had a legitimate expectation of privacy in the areas searched. Therefore, Defendant lacks

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<sup>10</sup> 439 U.S. 128 (1978).

<sup>11</sup> *Id.* at 133-4 (internal citations omitted).

<sup>12</sup> *Id.* at 148. See also *Rawlings v. Kentucky*, 448 U.S. 98 (1980); *Brown v. United States*, 411 U.S. 223 (1973).

standing to contest the search and seizure of the evidence in question on Fourth Amendment grounds.

*b. Defendant was not an overnight guest in the vehicle.*

Defendant argues he has standing because his use of the car was for the purpose of sleeping, therefore there is standing as an overnight guest. The Court notes there exists no present cases in this State regarding whether the overnight guest exception would apply to individuals using someone else's vehicle for sleeping. However, with the framework that Our Supreme Court has recognized that "the expectation of privacy with respect to one's vehicle is significantly less than that relating to one's home or office,"<sup>13</sup> the Court will analyze the overnight accommodation exception under these circumstances.

In *Olson*, a suspect in a robbery-murder spent the night of the crime on the floor of a *home* with the residents' permission. Olson kept a change of clothes at the home but did not have a key. On the day following the crime, police officers forcibly entered the home, found Olson hiding in a closet, and arrested him. At trial, Olson sought suppression of statements he made shortly after his arrest and was denied a hearing on the issue because he lacked standing to contest the legality of the entry. The Supreme Court held "that Olson's status as an overnight guest is alone enough

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<sup>13</sup> *State v. Colon*, 2001 WL 1729148, at \*6 (Del. Super. Ct. Nov. 29, 2001) (quoting *California v. Carney*, 471 U.S. 798 (1985)).

to show that he had an expectation of privacy in the home that society is prepared to recognize as reasonable.”<sup>14</sup> The Court reasoned:

From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend. Society expects at least as much privacy in these places as in a telephone booth—'a temporarily private place whose momentary occupants' expectations of freedom from intrusion are recognized as reasonable,' (citation omitted).

That the guest has a host who has ultimate control of the house is not inconsistent with the guest having a legitimate expectation of privacy.... the point is that hosts will more likely than not respect the privacy interests of their guests, who are entitled to a legitimate expectation of privacy despite the fact that they have no legal interest in the premises and do not have the legal authority to determine who may or may not enter the household.<sup>15</sup>

The facts before the Court differ vastly from that of *Olson*. First, the defendant in *Olson* sought shelter in a home, not a vehicle. Second, the defendant had a change of clothes at the home where he was seeking shelter. Here, Defendant has presented no facts to determine he was more than just temporarily resting in the car. Based on *Olson*, it seems there needs to be a connection to the place of shelter comprised of property being stored there. No such connection is established here. Lastly, defendant in *Olson* had permission from the owner of the home to use the home for

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<sup>14</sup> *Olson*, 110 S.Ct. at 1688.

<sup>15</sup> *Id.* at 1689.



sleeping. Here, Defendant has not presented any evidence that the owner of the vehicle allowed him to use the car as a place of shelter, like a home. Additionally, casual visitors of homes can hardly be argued that defendants had a legitimate expectation of privacy in the third parties' residence or automobile.<sup>16</sup> Without any of the factors present in *Olson* and with evidence that Defendant is merely a casual visitor, Defendant cannot escape the downfall of lack of standing because he is not an overnight guest in the vehicle.

## **II. Even if Defendant had standing, probable cause existed to effectuate the search.**

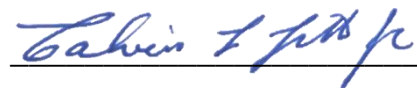
In addition to the State's argument regarding Defendant lacking standing to challenge the search, the State also argues that once First Officer opened the door lawfully under the community caretaker doctrine, probable cause existed to search the car based on the 911 phone call, the smell of marijuana, as well as Defendant moving his hands under a blanket after being told several times to put his hands where the officer could see them. Defendant conceded at the suppression hearing that First Officer acted in his capacity as a community caretaker when he opened the door of the vehicle after trying to get the attention of the passengers. Therefore, the Court will not address the community caretaker doctrine.

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<sup>16</sup> See *Rakas*, 439 U.S. at 142.

While this Court determined Defendant did not have standing to challenge the search, if Defendant did have standing, this Court would find probable cause existed to search the vehicle. The State and Defendant brought forth several recent cases to bolster their positions, one of which was *Cornelius*.<sup>17</sup> These facts here are distinguishable from *Cornelius* as the facts establish three additional factors relevant to probable cause aside from the smell of marijuana: (1) the resistance of Defendant to get out of the vehicle and show his hands and (2) the Defendant moving his hands under a blanket being a concern for officer safety.

Based on the totality of the circumstances, probable cause existed to search the vehicle even if the Defendant did have standing. For the aforementioned reasons, Defendant's Motion to Suppress is hereby **DENIED**.

A handwritten signature in blue ink, reading "Calvin L. Scott, Jr.", written over a horizontal line.

**Judge Calvin L. Scott, Jr.**

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<sup>17</sup> *State v. Cornelius*, No. CR 1908008822, 2021 WL 2879889, at \*2 (Del. Super. Ct. July 8, 2021).