



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMAR K. THOMPSON, :
Defendant Below, : No. 489, 2017
Appellant, :
v. :
Appeal from Sussex County
Superior Court
STATE OF DELAWARE, :
Plaintiff Below, :
Appellee. :

APPELLANT'S AMENDED OPENING BRIEF

**FUQUA, WILLARD, STEVENS &
SCHAB, P.A.**

A handwritten signature in cursive script, appearing to read "Tasha Marie Stevens".

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NATURE OF PROCEEDINGS

On July 4, 2017, Jamar Thompson was arrested for five charges: Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of Marijuana, and Following too Closely. At the time he was on Probation, so this arrest prompted the filing of an Administrative Warrant for a violation of probation.

On July 13th, at the Preliminary Hearing the State bond discharged all of the new charges for further investigation. However, at his preliminary Violation of Probation Hearing on July 14, 2017, Probation indicated that it would pursue the Violation despite the dismissal of the charges. A contested hearing was held on September 8th; the Court found Thompson in violation, ordered a Pre-sentence investigation, and sentenced him on October 26, 2017.

On November 22, 2017, Thompson timely filed a Notice of Appeal in this Court.

SUMMARY OF ARGUMENT

- I. THE CONTESTED HEARING THAT WAS BASED SOLELY ON NEW CRIMINAL CHARGES, WHERE AN INCOMPLETE DISCLOSURE OF THE EVIDENCE WAS LATE AND WHERE THOMPSON WAS UNAVAILABLE TO TESTIFY AND HIS WITNESS WAS NOT ALLOWED TO TESTIFY VIOLATED THOMPSON'S CONSTITUTIONAL DUE PROCESS RIGHTS.
- II. THE TRIAL COURT ERRED ACCEPTING EVIDENCE OBTAINED IN VIOLATION OF THOMPSON'S FOURTH AMENDMENT RIGHTS ON THE BASIS THAT SUPPRESSION ISSUES WERE NOT RELEVANT OR APPLICABLE DURING VIOLATION OF PROBATION HEARINGS.
- III. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THOMPSON IN VIOLATION OF PROBATION WITHOUT COMPETENT EVIDENCE THAT HE WAS AWARE OF THE PRESENCE OF THE GUN AND MARIJUANA IN THE VEHICLE.

STATEMENT OF FACTS

Jamar Thompson, the Defendant, was arrested on July 4, 2017 for five charges: Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of Marijuana, and Following too Closely. A1. Since he was on Level 3 Probation relating to a two 2012 convictions for Drug Dealing. This arrest prompted the filing of an administrative warrant for violation of probation based solely on the new charges. A2-3.

At his Preliminary Hearing on July 13th, the State bond discharged all charges for further investigation. A1. However, at his Violation of Probation Hearing the next day, Probation opted to pursue the Violation despite the disposition of the charges. So, a contested hearing was scheduled for September 8, 2017. Avi.

On August 4, 2017, Counsel filed a Request for Discovery on the Violation. Having received no response, on September 7, 2017, she emailed Adam Gelof, DAG regarding the responses. He claimed not to have received the Request and emailed police reports. A14-27. Immediately prior to the hearing, Counsel addressed the deficiency in the discovery provided; the Court's response was "do you get discovery on a VOP?" A30. Defense Counsel directed the Court to Rule 32.1, and after a brief review the Court ruled that the documents provided were sufficient, ruled that the State could not present anything beyond those documents, and that the matter would

proceed. A30-6. The Defense argued that Thompson is entitled to a disclosure of evidence to allow him to have a hearing at a meaningful time and in a meaningful manner. A35. The Court ruled the police reports provided the day before was sufficient under Rule 32.1. A36.

The State called Officer Leonard DeMalto. A37. He testified that on July 4, 2017, at about 12:47 p.m., he was on patrol in Seaford, DE when he observed a gold Acura RL traveling south on Sussex Highway. A38. He saw it weaving hastily in and out of traffic, so when it turned on Brickyard Road, he followed it in his unmarked silver Chevy Tahoe. A39. He claimed that the vehicle was not signaling the required 300 feet as it weaved in and out of traffic and began following a black vehicle within one car length. A40.

Then, DeMalto observed an explosion in the front of the gold Acura, which he believed was the result of the Acura rear-ending the black sedan. A40. The Acura pulled into the rear parking lot of a local business, and DeMalto pulled behind the car to check on the safety of the occupants and to investigate the vehicle for following too closely. A40-1. When he walked up to the vehicle, he observed only one occupant, the driver, Jamar Thompson. A41. The vehicle was leaking a large amount of green fluid on the windshield and from the hood. A42.

Thompson advised DeMalto that the vehicle malfunctioned and overheated.

A42. DeMalto asked Thompson to exit the vehicle because it appeared unsafe for him to remain inside. Thompson complied. A42. DeMalto described Thompson as being very uncomfortable with his presence---looking off into the distance, reluctant to make eye contact, and wanting to get the car to a nearby residence. A43. The officer requested Thompson's license; Thompson complied. A43. DeMalto conducted background and warrant checks and noticed that Thompson had no outstanding warrants but was on probation and had an extensive criminal history for weapons and drugs. A43.

DeMalto requested the assistance of a Blades officer, then re-approached Thompson asking him if he had been compliant with his probation. A44. Thompson advised that he had. A44. Next, DeMalto calls a probation officer to assure that Thompson was complaint with probation. A45. DeMalto told Thompson that he was waiting to hear back from that officer and that the other officer was bringing a K-9. A45. DeMalto claims that at this point Thompson advised that "the K-9 probably smelled the green fluid that had been coming out of his inoperable vehicle." A45. DeMalto asked for consent to search the vehicle, and Thompson refused. A46.

DeMalto indicated that he was not going to conclude the traffic stop until he received a phone call from the probation officer that he attempted to reach. A46. Officer Paskie of Blades arrived on the scene, and DeMalto requested that he have the

K-9 conduct a free air sniff. A46. The canine allegedly alerted on the driver side door. A47. DeMalto asked Thompson if there was anything illegal in the car; Thompson responded that "it was his girlfriend's car and that there wasn't anything illegal in the car that belonged to him." A47. DeMalto searched the car and located small amounts of marijuana inside the center arm rest of the vehicle and in the trunk, suspected THC oil in the arm rest, and a loaded 9-millimeter handgun completely concealed underneath the front passenger seat. A47-9. DeMalto claims that he asked Thompson if his fingerprints would be on the weapon and that he indicated that they would. A49. DeMalto placed Thompson under arrest and removed \$755 from his person. A50. Prints were lifted from the gun, thereafter, and were found to be of no value. A51. DNA was collected but not tested at the time of the hearing. A52.

On cross examination, DeMalto acknowledged that despite his alleged belief that the gold Acura struck the black sedan, the black sedan neither pulled over, nor did he attempt to make contact with that vehicle. A53. After the gold Acura pulled over into the parking lot, he pulled behind it and activated his emergency lights. A54. He admitted that even after he learned that there was no car accident, it was still his intention to ticket or make contact with the gold Acura. A54. He admitted that at the time he made contact with the driver, Jamar Thompson, Thompson was being detained with regard to his investigation into the traffic offense of following too closely. A55.

Yet, prior to calling for K-9 Handler Officer Paskie, DeMalto made no efforts to issue the traffic ticket. A55. He explained that this was because he “hadn’t concluded [his] traffic stop. The traffic stop would conclude with a citation.” A55.

When asked why he called for Officer Paskie on a traffic stop, DeMalto cited Thompson’s violent criminal history, status as a probationer, nervousness, and discomfort in his presence. A56. DeMalto acknowledged that being uncomfortable in the presence of a police officer is not illegal and that some people are uncomfortable with police officers whether or not a crime is being committed. A56-7. DeMalto also acknowledged that Thompson did not display any type of violent behavior during their encounter. A57. There were no pending court or probation warrants for Thompson on the computer check. A58. Yet, when Paskie arrived he did not continue with the issuance of the traffic ticket because he was still waiting on the call from probation. A58. When asked why he held up the stop pending a response from probation, he cited that GTF frequently contacts probation because sometimes probationers are wanted by probation but warrants have not issued or are pending. A58-9. DeMalto did not hear back from Probation until the K-9 search was complete, and he was searching the vehicle, which he estimated to be ten (10) minutes after the initial call. A60.

DeMalto only was able to observe the handgun under the front passenger seat by putting his head on the floor. A63-4. Either he or Officer Paskie located small

amounts of marijuana in the trunk and center console of the vehicle and an oil also in the center console. A63. None of these items were also not in plain sight; none were ever seen on Jamar Thompson's person, only in the various locations of the vehicle. A69-70. The vehicle did not belong to Thompson, and DeMalto was not aware if Thompson had accessed the trunk where the marijuana was located at any time. A64, 68. Nor was he sure how long Thompson had been in the car. A70. The oil in the car was never tested. A69. The containers holding the oil and alleged marijuana were not fingerprinted. A69. There was no evidence that Thompson ever touched them. A70. DeMalto never saw the gun on Thompson, never saw him in actual possession of the gun, and had no information that Thompson knew that a gun was in the car, aside from his being nervous and uncomfortable with a police officer. A66.

While waiting for Officer Paskie, DeMalto asked Thompson questions and claimed that Thompson incriminated himself. A66-7. At that time, Thompson had not been Mirandized and was not free to leave. A61. He was being detained to await a call from probation; about twenty minutes elapsed from his initial contact with Thompson until he searched the car. A67. Thompson declined a subsequent interview after his arrest, which was recorded. A73. Showell contacted DeMalto but he did not recall if she explained any information about the gun being in the vehicle. A65. He did not take any notes on that communication. A73-4. DeMalto was aware the criminal

case against Thompson was bond discharged at the Preliminary Hearing for investigation and that the charges may again be brought. A73-4.

When the State rested, Thompson was prepared to call the owner of the vehicle, Shonice Showell, to testify. A79-80. However, prior to the hearing, the DAG and/or Officer DeMalto, approached her to advise her that her testimony may prompt the filing of criminal charges against her. A80. Defense Counsel attempted to bring this to the Court's attention prior to the hearing, however, was advised the Court would take the matter up when it arose. A37. Showell was still willing to testify, however. A37. The Court asked for a proffer of her testimony, and when the State declined to grant her immunity, the Court would not allow her testimony and advised it would consider the proffer. A80-2. Thompson under the circumstances asserted his Fifth Amendment Right and did not testify at the hearing. A54.

During argument, Defense counsel asserted that the lack of discovery deprived Thompson of a fair hearing and effective cross-examination because the only information he has is limited and the witness is biased and the statements and evidence were taken during unlawful detention. A 84-91. The Court advised that Thompson is not entitled to further discovery and suppression issues do not apply to probation hearings. A89, 91. At the conclusion of the hearing, Thompson was found in Violation of Probation. A91-2. He was sentenced on October 26, 2017. Avii.

ARGUMENT

- I. **THE CONTESTED HEARING THAT WAS BASED SOLELY ON NEW CRIMINAL CHARGES, WHERE AN INCOMPLETE DISCLOSURE OF THE EVIDENCE WAS LATE AND WHERE THOMPSON WAS UNAVAILABLE TO TESTIFY AND HIS WITNESS WAS NOT ALLOWED TO TESTIFY VIOLATED THOMPSON'S CONSTITUTIONAL DUE PROCESS RIGHTS.**

Question Presented. Whether the Violation of Probation Hearing wherein the Defendant was not provided full disclosure of evidence against him and his witness was not allowed to testify, comported with the protections required by Due Process? This issue was raised in a timely manner before the Court at the Violation of Probation Hearing. (A35, A79)

Scope of Review. This Court reviews claims of infringement of fundamental rights de novo. Monceaux v. State, 51 A.3d 474 (Del. 2012).

Merits of Argument. On July 4, 2017 was arrest for five charges: Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon, Possession of Marijuana, and Following too Closely. These charges triggered a Violation of his Level 3 Probation. And, even though, the State bond discharged the charges for further investigation, probation moved forward with their prosecution of the violation of probation.

The U.S. Supreme Court ruled that the usual trial rights are not required for

probation violation proceedings. Gagnon v. Scarpelli, 411 U.S. 778, 789-790 (1973).

Violation of Probation determinations that can result in the deprivation of a fundamental right, or in this case the freedom of an individual, so implicates Fifth Amendment Due Process as guaranteed by the Fourteenth Amendment of the U.S. Constitution. The "minimum requirements of due process" at a violation of probation hearing are summarized as follows:

(a) written notice of the claimed violations of (probation or) parole; (b) disclosure to the (probationer or) parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation or] parole.

Id. at 786 (quoting Morrissey v. Brewer, 408 U.S. 471, 489 (1972)). Delaware has formalized these requirements in Super. Ct. Crim. R. 32.1, which provides that a person taken into or held in custody for an alleged violation of probation shall receive (1) written notice of the alleged violation; (2) disclosure of the evidence against the person; (3) an opportunity to appear and present evidence; (4) the opportunity to question adverse witnesses; and (5) notice of the right to retain counsel.

A. Thompson was not provided disclosure of the evidence against him.

Since the violation was based solely charges, which were no longer pending, on August 4, 2017, counsel filed a Request for Discovery pursuant to Super. Ct. Crim. Rule 32.1. Having received no response in early September, she emailed Adam Gelof, DAG who advised that he never received the request and forwarded over the police report. On September 8, 2017, Jamar Thompson was before the Court for his Contested Violation of Probation Hearing. Immediately at the start of the hearing, counsel addressed the deficiency in the discovery provided. The Court questioned if counsel was entitled to discovery on a VOP, then decided that the report provided was sufficient and limited the State's presentation thereto.

This disclosure did not comply with Rule 32.1, which required Thompson be given "(B) Disclosure of the evidence against the person." This rule did not even require that Thompson request such information, so the assertion that the discovery request filed was not addressed specifically to the prosecutor and that he did not receive it fails. Besides the fact that the discovery was filed in the traditional way that all discovery requests are filed, included the case numbers (the VOP and new case) and was served on the Dept. of Justice by placing it in the box at the Prothonotary, Thompson had no obligation to make such request at all. And, the fact remains that had Defense counsel not followed up, there is a good likelihood that it would not have

been provided at all in advance of the hearing. But receiving only the police report with its supplements the day before the hearing was insufficient to prepare a defense.

B. The late and incomplete disclosure hampered Thompson's ability to cross-examine the witnesses against him.

Further, the late disclosure was incomplete because the police reports were not the only evidence against Thompson. During the hearing, there were several references to other materials. The arresting officer, Officer DeMalto, testified that after making contact with Mr. Thompson, he contacted an additional officer for back-up, Officer Paskie. DeMalto believed that Paskie prepared a police report. He also testified that he contacted Suscom during the traffic investigation, had notes from the interaction, and later prepared a search warrant. The police report also mentions an attempt to interview Thompson. Thompson was not provided Paskie's report, the Suscom recordings, DeMalto's notes, the search warrant, or recorded interview prior to or at the hearing.

The court's ruling to limit the State to present only what it provided to the Defense was ineffective to mitigate the State's Rule violation because the full disclosure is essential to a probationer's defense as it relates to the Rule 32.1(D) "opportunity to question adverse witnesses," or the right to cross-examine. Without the additional, Thompson was unable to parse and compare the evidence for inconsistencies or to present evidence found therein in support of his position.

C. The timing of the hearing, where the State expected to re-file the charges and possibly prosecute the vehicle owner, did not allow Thompson the opportunity to testify and present witnesses on his own behalf.

DeMalto also testified that the July 4 charges were bond discharged at Preliminary Hearing with the expectation that they may be brought at a later date. Shonice Showell, the owner of the vehicle and the gun was present and prepared to testify at the hearing. However, the State advised her that she may be subject to prosecution. The court requested a proffer. When the State would not grant her immunity, the Court only considered the proffer. In light of the expectation of prosecution, Thompson exercised his Fifth Amendment right not to incriminate himself as to any of the charges. The hearing concluded with the finding of violation.

Under these circumstances, Thompson was not afforded minimal due process as he was not given disclosure of evidence against him, the opportunity to appear and present evidence, nor the opportunity to question adverse witnesses. Substantively, the little information that was given to him by the State and the timing of its provision gave Thompson little time for preparation. And, the limitation of the evidence provided in light of what was only available from the State did little to allow him to exercise his right to cross-examination. In a most superficial way, Thompson was given a hearing, but Due Process guarantees that the opportunity to be heard be at a meaningful time and in a meaningful manner. In Perry v. State, 741 A.2d 359, 364

(Del. 1999), this Court recognized the systemic disadvantage of having a probationer address new charges first. It identified that if the criminal charges are tried first, the Defendant enjoys the full panoply of rights guaranteed in defending the case. But, if unsuccessful, a conviction constitutes the basis for a violation. However, instead the State's decision to proceed with the unproven criminal charges as a basis for a violation "gave the State an advantage because Perry was not entitled to the usual 'trial rights' at a probation violation proceeding." Id. Additionally, in a probation proceeding, the State has the lesser burden of proof by a preponderance of the evidence.

In light of the marked advantage that the State had with regard to the order of the proceedings, the violation of Thompson's Due Process Rights, where he received the late and partial disclosure of evidence against him, stifled cross-examination, and no opportunity to present witnesses or be heard in light of the threat of prosecution and the protective Fifth Amendment Rights, Thompson was substantially prejudiced at his violation hearing.

II. THE TRIAL COURT ERRED ACCEPTING EVIDENCE OBTAINED IN VIOLATION OF THOMPSON'S FOURTH AMENDMENT RIGHTS ON THE BASIS THAT SUPPRESSION ISSUES WERE NOT RELEVANT OR APPLICABLE DURING VIOLATION OF PROBATION HEARINGS.

Question Presented. Whether Thompson was substantially prejudiced by the Court's consideration of evidence obtained in violation of his fourth amendment rights? This issue was raised in a timely manner before the Court at the Violation of Probation Hearing. (A88-91)

Scope of Review. To the extent that a trial judge's legal conclusions are examined, this court reviews such determinations de novo for errors in applying legal precepts. Lopez-Vazquez v. State, 956 A.2d 1280, 1284-1285 (Del. 2008).

Merits. Defense counsel received partial discovery the day prior to the hearing, so no written suppression motion was filed. However, the issue of the traffic stop becoming an unlawful detention was raised in argument following the Contested VOP Hearing. Thompson argued the issue that the officer unlawfully extended the traffic stop and that the search that yielded the evidence was conducted during that illegal detention. The Court interrupted asserting that suppression issues are not for consideration in Violation of Probation proceedings. However, in Jenkins v. State ("Jenkins III"), 8 A.3d 1147 (Del. 2010), this Court in considering David Jenkins' various arguments that his Violation of Probation decisions should be reversed because

of successful suppression motions in the co-pending criminal cases, the Court determined that in each of the two violations addressed, either no suppression was filed as to the violation or the one that was filed was withdrawn and not renewed. The Court acknowledged the right to assert suppression issues when it held that Jenkins waived his right to present a motion to suppress in his 2005 VOP hearing. Jenkins v. State (“Jenkins I”), 903 A.2d 323 (Del. 2006). Implicitly therein, the Court acknowledged that suppression issues applied to violations. Jenkins III at 1150.

In this case, the court’s failure to consider the issue resulted in substantial prejudice because it then considered facts that should have been suppressed. DeMalto’s description of the traffic stop and ensuing investigation is a textbook case of illegal detention. A traffic stop is justified where there is a reasonable, articulable suspicion of criminal activity and the scope is reasonable. State v. Ward, 2016 Del. Super. LEXIS 448 (Del. Super. Ct. Sept. 8, 2016). The duration and scope of the stop must last no longer than is reasonably necessary to accomplish the purpose of the stop, which is when the legitimate investigative purpose of the traffic stop is completed. State v. Chandler, 132 A.3d 133, 141 (Del. Super 2016). When an investigation continues beyond the time required for the purpose of the initial stop, it is a separate seizure that require separate facts to justify the further intrusion. Caldwell v. State, 780 A.2d 1037, 1047 (Del. 2001).

DeMalto testified that he observed the Acura that Thompson was driving weaving in and out of traffic and following a black sedan closely. He heard a noise come from the Acura and thought that it had collided with the sedan. Thompson pulled over on his own accord, and DeMalto activated his emergency lights and pulled behind him. When DeMalto approached Thompson, still inside the Acura, and learned that the vehicle was not involved in a crash but had malfunctioned, Thompson was detained for the purpose of the investigation of the Following too Closely traffic charge.

But, DeMalto made no efforts to issue the citation. Thompson's warrant check was clear. Instead, after running the background and warrant checks, he placed a call to a K-9 officer and a probation officer. DeMalto did not observe any wrongdoing, but felt that Thompson was uncomfortable with the police presence and that his statements and responses to questioning were strange. DeMalto was candid in explaining that he was not going to issue the citation until he received a return call from the probation officer. He estimated that the entire exchange from his first encounter of Thompson to DeMalto's search of the vehicle took about twenty (20) minutes. A measurable extension of the stop without separate independent facts to support it was a constitutional violation. See Murray v. State, 45 A.3d 670, 674 (Del. 2012) citing Arizona v. Johnson, 555 U.S. 323, 333-34 (2009). By virtue of the Following too

Closely inquiry, DeMalto did not have free rein to ask as many questions as we wanted to for as long as he wanted to without further justification. Murray, supra at 671.

The facts giving rise to the charges were gained during an unlawful detention of Thompson; as a violation of his rights under Del. Const. Art. I § 6 and U.S. Const. Amend. IV rights against unreasonable searches and seizures, the evidence should have been suppressed and not considered as evidence in the contested hearing.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THOMPSON IN VIOLATION OF PROBATION WITHOUT COMPETENT EVIDENCE THAT HE WAS AWARE OF THE PRESENCE OF THE GUN AND MARIJUANA IN THE VEHICLE.

Question Presented. Whether the State presented sufficient competent evidence to show that Thompson did not behave as well as a probationer should? This issue was raised in a timely manner before the Court at the Violation of Probation Hearing. (A85)

Scope of Review. This Court reviews findings in a violation of probation proceeding for an abuse of discretion. Kilson v. State, 2017 Del. LEXIS 284 (Del. Supr. July 6, 2017).

Merits of Argument. At a probation hearing, the State is obliged to present some competent evidence to prove by a preponderance of the evidence that Thompson's behavior was not as good as the conditions of his probation requires. See Gray v. State, 2017 Del. LEXIS 201 (Del. Supr. May 12, 2017). Officer DeMalto's testimony was that when he searched the car during a traffic stop, he found user weight marijuana and drugs in the gold Acura that Thompson was driving. The car belonged to Shonice Showell, who had come to testify at the hearing, but was not allowed. When Showell contacted the officer, he recalled that she wanted to retrieve her gun, but did not recall her giving him information about the gun being in her car . He did

not take any notes on that interaction.

None of these items were in plain sight, and none were ever seen on Jamar Thompson's person. He offered no fingerprint evidence as to any of the items. DeMalto had no information that Thompson had accessed the trunk at any time. DeMalto never saw the gun on Thompson, never saw him in actual possession of the gun, and offered no information that Thompson knew that a gun was in the car at the time. In order to possess these items in violation of the law, Thompson would have had to intend to do so, which at least requires that he know that the items were in the car. DeMalto testified that Thompson was using his girlfriend's car, and that there was not anything illegal therein that belonged to him.

DeMalto proffered that Thompson was very nervous and uncomfortable in the presence of a police officer, seemingly wanting to get away from him. But, this same person that denied the Officer consent to search, and he declined an interview upon arrest confided to the officer that his fingerprints would "indeed" be on the gun and that there may be marijuana in the vehicle. These statements as well as all others are not recorded and uncorroborated offered by the officer that violated Thompson's rights by keeping him at the scene for over 20 minutes, making no effort to prepare a traffic citation.

With the exception of the traffic charge, all of these crimes require knowledge

and intent. However, even in the absence of evidence as to knowledge and intent, at the conclusion of the hearing, the Court found Thompson in violation of probation stating this:

he knew there was marijuana in the vehicle...and the evidence and the reasonable inferences therefrom that the weapon was in the car in the seat next to him in which one can easily lean forward and reach under the seat...he was aware of it. He knew that it was his girlfriend's gun and he knew and said that my—acknowledged his fingerprints being on the gun. He is in violation of probation.

An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice. Lilly v. State, 649 A.2d 1055, 1056 (Del. Supr. 1994). The State's evidence was presented by an interested witness who testified of uncorroborated, incriminating statements that are and inconsistent with his account of Thompson's being uncomfortable with his police presence. In addition, Thompson had little ability to cross-examine where the Court did not require full or timely disclosure. And, Thompson had no opportunity to present his own evidence because his witness was not allowed to testify and he was under the threat of further prosecution. Finally, the Court did not consider Thompson's suppression argument, deeming it inapplicable to probation proceedings. In light hereof, the finding that Thompson knew the gun and drugs were in the car and was in violation of probation was abuse of discretion.

CONCLUSION

Based on the foregoing argument, Defendant request this Honorable Court find that the finding of a violation of probation against Defendant, Jamar Thompson, must be reversed because 1) Contested Violation of Probation hearing did not comport with the requirements of Constitutional Due Process, 2) it was an abuse of discretion for the trial court to disregard the Defendant's suppression argument, and 3) the finding of a violation was an abuse of discretion.

Exhibit A

McNULTY - DIRECT

1 didn't get any type of discovery.

2 THE COURT: Well, you practice criminal law.
3 You have done violations of probation for a long time.

4 MS. STEVENS: And I get discovery when I ask
5 for it. Then I am prepared.

6 THE COURT: You are telling me you get
7 suppression under a violation of probation?

8 MS. STEVENS: I haven't, so I don't know, Your
9 Honor.

10 THE COURT: All right. Thank you. Anything
11 else?

12 MS. STEVENS: So as far as the drugs, I asked
13 the officer directly: Do you have any information that
14 Mr. Thompson was aware if there were any drugs in the
15 trunk in the car. No, no testing were done on the
16 drugs aside from the field test. The gun I have
17 already gone over. I think that was essentially the
18 substance of the violation. Yes, Your Honor, that
19 would be my argument.

20 THE COURT: Well, there was evidence that the
21 defendant said there may be marijuana in the vehicle.
22 There is no testimony as to the defendant being aware
23 that there was marijuana in the trunk.

DAVID WASHINGTON
Official Court Reporter

McNULTY - DIRECT

1 He is in violation of probation. He knew
2 there was marijuana in the vehicle. I am satisfied
3 based on the testimony and the evidence and the
4 reasonable inferences therefrom that the weapon that
5 was in the car in the seat next to him in which one can
6 easily lean forward and reach under that seat, probably
7 easier than you can reach under your own seat in some
8 circumstances, he was aware of it. He knew that it was
9 his girlfriend's gun and he knew and said that my --
10 acknowledged his fingerprints being on the gun. He is
11 in violation of probation.

12 Now, let me ask the prosecutor a question.
13 Has the gun been sent anywhere for DNA testing?

14 MR. GELOF: Yes.

15 THE COURT: And you are awaiting DNA testing?

16 MR. GELOF: Yes, Your Honor.

17 THE COURT: All right. And when is that
18 supposed to be done?

19 OFFICER DEMALTO: May I speak, Your Honor?

20 THE COURT: Yes, you may speak. You may stand
21 first. When was it sent? Don't tell me yesterday.

22 OFFICER DEMALTO: It was sent, the firearm
23 itself was sent for testing the day of the arrest.

DAVID WASHINGTON
Official Court Reporter