

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

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V.

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ID: 0110012288

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Raymond L. Bruton

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Submitted: February 7, 2002
Decided: February 8, 2002

Opinion and Order

Now this 8th day of February 2002, it appears to the Court as follows:

- 1) Defendant, Raymond Bruton has filed a Motion to Suppress Evidence seized as a result of execution of a search warrant.
- 2) A hearing was held on that Motion January 16, 2002.
- 3) Counsel filed memoranda of law subsequent to the hearing as well as producing the actual search warrant involved as requested by the Court. (The application and affidavit having been earlier produced).
- 4) It is uncontroverted that the search of defendant's residence and vehicle occurred during nighttime hours.
- 5) Defendant challenges the issuance of a nighttime search

warrant in this case.

- 6) The application and affidavit reveal an investigation of defendants' alleged drug dealing spanning a time frame from May 2001 through the date of the application October 17, 2001.
- 7) The affidavit reveals controlled buys at defendant's residence at approximately "2311 hours" August 21 (Para. E); "1026 hours" July 13 (Para. D) "2215 hours" May 14 (Para. C) and finally "2128 hours" October 16 (Para. F).
- 8) The affidavit state all buys were made "after 2000 hours and before 0600 hours with the exception of the control purchase on 16 October 2001." This conflicts with the "1026" hours statement (Para. D) unless that was typographical error.
- 9) The warrant itself state on its face "NIGHTTIME SEARCH WARRANT" but then in its body does not contain any finding nighttime search warrant was justified by exigent circumstances; indeed, it specifically states:

"...Commanded, ...to search the above named persons(s), place or thing for the property specified... and serving this warrant in the daytime..."
- 10) It is clear from the affidavit itself that there are not exigent circumstances to believe that property or evidence would be removed or destroyed if the police waited for daytime hours. Controlled buys were made in May, July, August and October. At least one buy was made during daytime hours (even assuming the 1026 time was a typographical error).

- 11) Absent a finding of exigency the statute precludes a nighttime search, 11 Del. C§ 2308.
- 12) The State argues that *State v. McDuell*, Super., 1989 WL 16962, (1989) would allow evidence found in defendant's car to be admitted even if the Court grants the motion as to the home.
- 13) Section 2308 does not apply to vehicles by its language, it refers only to dwellings.
- 14) In this case there exists probable cause to believe that the vehicle was used in drug business, in particular the defendant was observed, during a controlled purchase, going to the vehicle (Cadillac, Regis. 72540) and securing an object, then return to the dwelling and completing the sale. (Para. F).
- 15) The State is correct that the warrant as directed to the vehicle could be executed at night.

Wherefore, it is the decision of the Court that all items found in defendant's residence must be suppressed; items found in the vehicle will not be suppressed.

IT IS SO ORDERED,

The Honorable Richard S. Gebelin

Orig: Prothonotary
cc: All Counsel of Record