

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

STATE OF DELAWARE,)
)
 v.) ID. NO. 0006018527
)
ANTOINE DOLLARD,)
)
 Defendant.)

Submitted: December 27, 2000
Decided: January 11, 2001

*Upon Consideration of
Defendant's Motion to Suppress.*
DENIED.

Joelle M Wright, Deputy Attorney General, 820 N. French Street, Wilmington, Delaware, 19801. Attorney for State.

Kevin J. O'Connell, Esquire, 831 N. Tatnall Street, Wilmington, Delaware, 19801. Attorney for Defendant.

SLIGHTS, J.

This matter is presently before the Court on defendant's Motion to Suppress Evidence. For the following reasons, the motion is DENIED.

I. FACTS

On August 28, 2000, defendant, Antoine Dollard ("Dollard"), was indicted on one count of Possession With Intent to Deliver Cocaine, one count of Trafficking in Cocaine, one count of Maintaining a Dwelling For Purposes of Distributing Controlled Substances, and one count of Possession of Drug Paraphernalia. On October 16, 2000, Dollard filed a motion to suppress evidence which was seized on June 23, 2000, from his automobile without a search warrant and from his apartment pursuant to a day-time search warrant.

The evidence adduced at the hearing indicates that Dollard came under suspicion for selling cocaine after confidential informants working with the New Castle County Police Department drug squad arranged and, ultimately, consummated two "controlled buys" of cocaine from the defendant. The New Castle County Police Department then began to surveil the defendant's apartment.

At approximately 8:25 p.m. on June 23, 2000, Dollard was observed by police departing his residence and entering a maroon Dodge Intrepid. Detective Bruce Pinkett contacted a fellow officer by radio and directed the officer to stop Dollard for operating a motor vehicle without a valid driver's license. Detective Pinkett had

determined during the course of his investigation of Dollard that he did not possess a valid driver's license.

Officer Unger received the radio call from Detective Pinkett. He then confirmed on his laptop computer that Dollard did not possess a valid driver's license and discovered as well during this process that Dollard was wanted on a Superior Court capias. He then attempted to stop Dollard's vehicle. When Officer Unger activated his emergency equipment, he noted that Dollard increased his speed and began efforts to avoid apprehension. Officer Unger gave chase. Dollard's vehicle reached speeds in excess of sixty miles per hour while driving through residential neighborhoods. Accordingly, Officer Unger prudently abandoned the high-speed pursuit but continued to follow Dollard at reasonable speeds.

Officer Unger eventually came upon the vehicle Dollard had been operating in a cul-de-sac in a residential neighborhood. Dollard had abandoned the vehicle; the officer found the engine running, the door shut, the driver's window down and the stereo playing. The vehicle was not parked legally in that it was stopped in the middle of the roadway. Officer Unger observed that another officer was entering nearby woods, apparently in pursuit of Dollard. Officer Unger initially joined the other officer in foot pursuit, but eventually returned to the abandoned vehicle. When Officer Unger looked through the opened window of the vehicle he noticed in plain

view several plastic baggies which appeared to contain cocaine. Officer Unger then arranged to have the vehicle towed. In accordance with standard operating procedure, Officer Unger inventoried the contents of the vehicle prior to its removal by the tow truck. This inventory included the baggies Officer Unger had observed through the driver's side window.

In the meantime, Detective Pinkett waited at Dollard's residence to see if Dollard would return there after the vehicle chase. When Dollard did not return, Detective Pinkett determined that it was time to apply for a search warrant for Dollard's apartment. According to Detective Pinkett, he had been planning to obtain a search warrant for some time but, for reasons not clear in the record, he had not done so. Detective Pinkett went to the New Castle County Police station to print out the application for search warrant he previously had prepared and then went to Justices of the Peace Court No. 20 to apply for the warrant.

The search warrant was issued by the Magistrate Judge at 9:45 p.m. Detective Pinkett immediately radioed officers who were located just outside Dollard's residence to advise them that the warrant had been obtained and that the search of Dollard's apartment could begin. Officer Reynolds was one of the officers who was poised to begin the search of Dollard's residence upon authorization from Detective Pinkett. He testified that the search began immediately after receiving word from

Detective Pinkett. According to Officer Reynolds, his police report indicates that the search warrant was executed at 9:46 p.m.

At some point prior to, or contemporaneous with, the execution of the search warrant, Dollard was apprehended by Officer Reynolds on a stairway in the apartment complex where Dollard resided. Officer Reynolds apparently had heard a description of Dollard over the police radio and was aware of the circumstances of the prior unsuccessful effort to apprehend him. He conducted a pat-down search of Dollard for officer safety. The search revealed a pay stub which confirmed Dollard's identity and his home address.

The search of Dollard's apartment produced additional crack cocaine, empty baggies and United States currency, all of which were seized and held for evidence.

II. DISCUSSION

Dollard's Motion to Suppress initially challenged the search of his vehicle by Officer Unger. Defense counsel withdrew this aspect of the motion at the conclusion of the evidentiary hearing after conceding that the search was lawful because the seized contraband was in "plain view" of the officer prior to entering Dollard's vehicle. Accordingly, three issues remain for disposition on this motion: (1) whether the pat-down search of the defendant conducted by Officer Reynolds was lawful; (2) whether the application for search warrant submitted by Detective Pinkett contained

misstatements of fact which, if omitted, would render the affidavit of probable cause inadequate to justify the issuance of a search warrant; and (3) whether the search warrant was executed at night in violation of 11 *Del. C.* § 2308. The Court will address these issues *seriatim*.

A. The Detention and Pat-Down Search

Officer Reynolds' detention and pat-down search of Dollard must be measured under both state and federal constitutional principles.¹ The Court first must determine whether the officer's detention of Dollard was based upon a reasonable, articulable suspicion of criminal activity.² The Delaware Supreme Court has defined reasonable, articulable suspicion as "an officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.'"³ The determination of reasonable suspicion is made "in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police

¹ *Jones v. State*, Del. Supr., 745 A.2d 856, 863-64 (1999); *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

² *Terry*, 392 U.S. at 21.

officer in the same or similar circumstances, combining objective facts with such officer's subjective interpretation of those facts.”⁴

The Court is satisfied that Officer Reynolds had a reasonable and articulable suspicion that Dollard had been involved in criminal activity. He had received a description of Dollard over the police radio, and had also received information regarding Dollard's effort to evade police earlier in the evening. Finally, he was aware that Dollard was under investigation for dealing drugs. Under the totality of these circumstances, Officer Reynolds lawfully detained Dollard in accordance with the constitutions of Delaware and the United States, and 11 *Del. C.* § 1902.

³ *Jones*, 745 A.2d at 861 (citations omitted).

⁴ *Id.* (citations omitted).

The Court must now determine whether Officer Reynolds was justified in conducting a pat-down search of Dollard after detaining him. To justify this pat-down search, Officer Reynolds could not rely simply upon the reasonable, articulable suspicion that justified his detention of Dollard. In order to justify his pat-down search, Officer Reynolds must also reasonably have believed that Dollard was armed and dangerous.⁵

⁵ *Terry*, 392 U.S. at 24; *Robertson v. State*, Del. Super., 596 A.2d 1345, 1352 (1991).

Several factors support the pat-down search of Dollard in this case. First, Officer Reynolds was aware that Dollard was a suspected drug dealer and it is generally known by police officers that drug dealers often carry weapons.⁶ In addition, Officer Reynolds was aware that Dollard had been involved in a high speed vehicle chase with a fellow officer through residential neighborhoods. Thus, Officer Reynolds knew that Dollard had already demonstrated behavior which put the lives of police officers and civilians in jeopardy. Under these circumstances, Officer Reynolds was justified in conducting the pat-down search.

B. The Search Warrant

Dollard alleges that Detective Pinkett included misstatements of fact in his affidavit of probable cause. He further contends that these misstatements constituted either intentional or reckless efforts to mislead the Magistrate Judge. Dollard argues that, in the absence of the misstatements, the affidavit of probable cause is insufficient to connect his residence to any criminal conduct which might justify a search of the premises.⁷

⁶ *State v. Doleman*, Del. Super., IK94-08-0303-05, 1995 Del. Super. LEXIS 235, Ridgely, P.J., at *6 (Apr. 21, 1995)(Mem. Op.).

⁷ *See, Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978).

An affidavit supporting an application for a search warrant must set forth sufficient facts to allow a reasonable man to conclude that a crime has been committed and that the property sought to be seized would be found in a particular place.⁸ Probable cause is established when a nexus appears between the items sought and the place to be searched.⁹ When the issuing magistrate makes a probable cause determination, a reviewing court will pay great deference to it and accord it a common sense evaluation.¹⁰

Dollard does not challenge the sufficiency of the affidavit of probable cause on its face. Rather, he claims that the affidavit of probable cause provides the requisite nexus between his residence and the contraband listed in the search warrant only by means of false statements either intentionally or recklessly included in the affidavit by Detective Pinkett. In order successfully to challenge an affidavit under *Franks*, defendant must prove by a preponderance of the evidence that: (1) the affidavit contains false allegations; (2) that the affiant included the false allegations in the affidavit; and (3) that the allegations were deliberate falsehoods or made with reckless disregard for their truth.¹¹ The affidavit must be considered in light of “a presumption

⁸ *Blount v. State*, Del. Super., 511 A.2d 1030, 1032-33 (1986)(citing *Jensen v. State*, Del. Super., 482 A.2d 105, 110-111 (1994); 11 *Del. C.* § 2306.

⁹ *Hooks v. State*, Del. Super., 416 A.2d 189, 203 (1980).

¹⁰ *Jensen*, 482 A.2d at 111.

¹¹ *Franks*, 438 U.S. at 171; *State v. Caldwell*, Del. Super., I.D. Nos.

of validity.”¹² And “[a]llegations of negligence or innocent mistake are insufficient” to sustain movant’s burden.¹³

Dollard specifically attacks paragraph 2 of the affidavit of probable cause in which Detective Pinkett states that “a confidential source advised him that Dollard was selling cocaine from his residence in Appleby Apartments, New Castle, Delaware.” Dollard contends that the police lacked any information that supported the contention that he was selling drugs from his home. Rather, Dollard contends that the facts known to Detective Pinkett establish, at best, that drug transactions were occurring outside of Dollard’s apartment at locations prearranged with the confidential source.

The Court rejects Dollard’s *Franks* argument for two reasons. First, Dollard has failed to carry his burden of proving that the affidavit *on its face* contains falsehoods. No evidence introduced at the suppression hearing contradicted Detective Pinkett’s statement that he had been told by a confidential source that

9807006121/9807006069, 1999 Del. Super. LEXIS 531, Witham, J., at *17 (Oct. 22, 1999)(Mem. Op.).

¹² *Franks*, 438 U.S. at 171.

¹³ *Id.*

Dollard was selling cocaine from his residence. The statement in the affidavit of probable cause to that effect, therefore, has not been proven by the defendant to be false. Second, and more importantly, defendant's argument cannot be reconciled with Delaware law. Specifically, in *Hooks*, the Court held:

Concrete first hand evidence that the items sought are in the place to be searched is not always required in a search warrant . . . The question is whether one would expect to find those items at that

place . . . If so, then that inference will suffice to allow the valid issuance of a search warrant for that place . . .¹⁴

Detective Pinkett's affidavit sets forth sufficient facts to allow a reasonable inference that Dollard was maintaining drugs, scales, currency, and other "tools of the trade" at his residence. Specifically, the affidavit stated that before each "controlled buy", the defendant was observed to leave his apartment and drive directly to the designated location to complete the transaction. Moreover, Detective Pinkett alleged that, in his extensive experience, drug dealers usually maintain the source and fruits of their commercial efforts in their residences. This information provided more than sufficient facts to enable the magistrate to conclude that a crime had been committed

¹⁴ *Hooks*, 416 A.2d at 203.

and that the evidence sought to be seized would be found in Dollard's residence.¹⁵

C. The Execution of the Warrant.

¹⁵ *See, Blount*, 511 A.2d at 1033.

Finally, Dollard contends that the search warrant was executed at his home at night in violation of 11 *Del. C.* § 2308.¹⁶ The Court is satisfied that the search of the Dollard's residence commenced at 9:46 p.m. Accordingly, the search did not violate 11 *Del. C.* § 2308, even if it extended past 10:00 p.m.¹⁷ The execution of the search warrant, therefore, was proper.

III. CONCLUSION

Based on the foregoing, the defendant's motion must be, and hereby is,

¹⁶ 11 *Del. C.* § 2308 states, in relevant part:

A search warrant shall not authorize the person executing it to search any dwelling house in the nighttime unless the judge, justice of the peace or magistrate is satisfied that it is necessary in order to prevent the escape or removal of the person or thing to be searched for, and then the authority shall be expressly given in the warrant. For purposes of this section the term "nighttime" shall mean the period of time between 10 p.m. and 6:00 a.m.

¹⁷ See, *Johnson v. State*, Del. Supr., No. 256, 1995, 1996 WL 69829, Holland, J., at **2 (Feb. 9, 1996)(ORDER); *State v. McMillan*, Del. Super., Cr. A. No. IN93-02-0752R1, 1996 WL 280773, Herlihy, J., at *1 (Mar. 21, 1996); *State v. Herhal*, Del. Super., 307 A.2d 553, 557 (1973).

DENIED.

IT IS SO ORDERED.

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 v.) ID. NO. 0006018527
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ANTOINE DOLLARD,)
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 Defendant.)

ORDER

This 11th day of January, 2001, for the reasons expressed in the Court's
Opinion issued this date,

IT IS ORDERED that the defendant's Motion to Suppress Evidence is
DENIED.

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Judge Joseph R. Slights, III