

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

STATE OF DELAWARE	:	
	:	
v.	:	I.D. 0509002041
	:	
CORNELL GARVIN	:	
	:	
Defendant.	:	
	:	

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

Date submitted: November 28, 2004
Date decided: January 6, 2006

Brian J. Chapman, Esquire, Deputy Attorney General, Wilmington,
Delaware. Attorney for the State of Delaware.

Nicole Marie Walker, Esquire, Assistant Public Defender, Wilmington,
Delaware. Attorney for the Defendant Cornell Garvin.

SCOTT, J.

Before this Court is a Motion to Suppress filed by Defendant Cornell Garvin (“Garvin”) through his counsel, Nicole M. Walker, Esquire. Garvin concedes that the concerned citizen tip coupled with the smell of marijuana amounted to reasonable grounds for Officer Muniz (“Muniz”) to stop him and demand his name, address, business abroad and destination.¹ He also concedes that Muniz was permitted to do a pat-down search for officer safety.² However, in support of his motion to suppress, Garvin first argues that there was not reasonable suspicion to warrant further detention after the pat-down produced no evidence of a crime and he provided his identification, name and destination. Second, he contends that the *Griffin*³ reasonableness requirements were violated when his home was searched. Garvin alleges that Probation & Parole (“P & P”) Officer Jodi Hunter (“Hunter”) obtained a pre-arrest checklist and authorization from her supervisor, however, the factors assessed to perform the search were based solely on the conduct of Tyreke Spencer (“Spencer”), rather than his own conduct. Garvin argues that the search was not based on the requisite reasonable factors that he was committing a crime or that his probation was being violated. Thus, Garvin contends that Muniz unlawfully arrested him

¹ 11 *Del. C.* §1902.

² 11 *Del. C.* §1903.

³ *Griffin v. Wisconsin*, 483 U.S. 868 (1987).

and, as such, the subsequent search by P & P should be suppressed as fruit of the poisonous tree. The State opposes the Motion contending that the initial detention and warrantless search of Garvin's residence were valid. A suppression hearing was held before this Court on November 22, 2005. Thereafter, the Court requested submissions from the parties setting forth their respective positions and case law regarding the detention and warrantless search of Garvin's residence. The submissions having been filed, the issue before the Court is now ripe for decision.

FACTS

Police received accurate information from a concerned citizen that previously had provided reliable information regarding drug activity at 1120 W. 6th Street in Wilmington, Delaware. The citizen had provided descriptions of two individuals who were allegedly involved in the drug transaction and a description of a white Pontiac that was parked at this address. The citizen had further stated that the two individuals left through the rear of the residence.

Wilmington Police Officer Muniz arrived at the residence shortly after the call and spotted two people leaving the rear of the residence. As he approached, the two individuals were surprised by the officer's presence.

Muniz stopped Spencer and Garvin and detained them for a period of less than two hours. Both individuals smelled of marijuana and were patted down and handcuffed for the officer's safety.

Officer Muniz determined that both Spencer and Garvin were on probation and called P & P. Spencer was on level 4 home confinement probation and was wearing an ankle bracelet. He was not supposed to be at the 1120 W. 6th Street address. Garvin was on level 2 probation. His address for probation purposes was 1120 W. 6th Street.

P & P Officer Hunter prepared an administrative form to search Garvin's residence. Despite inconsistencies in a couple of checked boxes the Court finds that the form was prepared in accordance with P & P procedures. P & P Officers arrived at the residence and conducted a search in accordance with their procedures. Among the items they found were United States currency and three bundles of crack cocaine.

DISCUSSION

A. The Investigatory Stop Was Constitutional Because There Was Reasonable Articulated Suspicion That Garvin Was Committing, Had Committed Or Was About To Commit A Crime

On a Motion to Suppress evidence, the State bears the burden of proving that the search and seizure comported with federal and state

constitutional rights and state statutory law.⁴ The Fourth Amendment of the United States Constitution guarantees that individuals will be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”⁵ Although nearly identical in language, Delaware’s Fourth Amendment “provides a greater protection for the individual than the United States Constitution in the determination of whether a seizure by the State has occurred.”⁶

In *Terry v. Ohio*,⁷ the Supreme Court held that a detention could only be lawful where it was premised on reasonable and articulable suspicion of criminal activity.⁸ Citizens’ tips, as well as personal police observations, are sufficient to form a reasonable suspicion of criminal activity.⁹ Articulable suspicion “does not deal with hard certainties, but with probabilities.”¹⁰

Delaware has defined reasonable suspicion as “the officer’s ability to ‘point to specific and articulable facts which, taken together with rational

⁴ *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001).

⁵ U.S. Const. amend. IV. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961) (holding that the Fourteenth Amendment to the United States Constitution makes the Fourth Amendment applicable to the states).

⁶ *Flonnory v. State*, 805 A.2d 854, 857 (Del. 2001)(citing *Jones v. State*, 745 A.2d 856, 860 (Del.1999)).

⁷ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁸ *Id.* at 22.

⁹ *Morris v. State*, Del. Supr., 645 A.2d 569 (table), 1994 WL 237600, at *3 (citing *Jaben v. United States*, 381 U.S. 214 (1965)).

¹⁰ *United States v. Cortez*, 449 U.S. 411, 418 (1981).

inferences from those facts, reasonably warrant th[e] intrusion.”¹¹ In determining if there is reasonable suspicion, a court may look at the totality of the circumstances,¹² coupled with “inferences and deductions that a trained officer could make which ‘might well elude an untrained person.’”¹³

To support his Motion to Suppress, Garvin contends that after the pat-down search produced no evidence of a crime and after he allegedly provided his identification, name, and destination there was no longer reasonable suspicion to warrant further detention. In determining if the investigatory stop and detention was constitutionally permissible, the Court will consider the Delaware constitutional standards for police investigatory stops which have been codified by 11 *Del. C.* §1902.¹⁴ This Court finds that the detention of Garvin was reasonable and did not violate either his Fourth or Fourteenth Amendment rights. 11 *Del. C.* §1902 reads in pertinent part:

- (a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person’s name, address, business abroad and destination.
- (b) Any person so questioned who fails to give identification or explain the person’s actions to the satisfaction of the officer may be detained and further questioned and investigated.
- (c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be

¹¹ *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989)(citing *Terry*, 392 U.S. at 21).

¹² *Jones*, 745 A.2d at 861.

¹³ *Harris v. State*, 806 A.2d 119, 127 (Del. 2002).

¹⁴ *Jones*, 745 A.2d at 863.

recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

In detaining Garvin and Spencer, Officer Muniz acted on reasonable, articulable facts, which justified the detention. Muniz had learned from a past proven, reliable concerned citizen that drug activity was occurring at 1120 W. 6th Street in Wilmington, Delaware. The citizen had provided descriptions of two individuals who were allegedly involved in the drug transaction and a description of a white Pontiac parked in front of 1120 W. 6th Street. The citizen had further stated that the two individuals left through the rear of the residence. The citizen's tip was sufficiently corroborated by Muniz's own personal observations. Shortly after the call, Muniz arrived at 1120 W. 6th Street and observed a white Pontiac and two individuals leaving the rear of the residence. The two individuals acted in a highly suspicious manner. As Muniz approached, they acted surprised by his presence. They also smelled of marijuana. Upon questioning the suspects, Muniz learned that both Garvin and Spencer were on probation. Spencer, who was on level 4 home confinement probation, was not supposed to be at the 1120 W. 6th Street address. These actions gave Muniz further grounds for suspecting that the individuals were committing, had committed, or were about to commit a crime. This Court is satisfied that Muniz had a reasonable and

articulable suspicion that Garvin was involved in criminal activity.

Furthermore, Delaware's two-hour statute, 11 *Del. C.* §1902, statutorily authorizes the detention of a person for two hours while the investigation unfolds except for purposes prohibited by the Fourth and Fourteenth Amendments.¹⁵ Here, the detention of Garvin was brief and minimally intrusive. He was detained for a period of less than two hours while his residence was searched. The scope of this stop and detention was within the time parameters of Delaware's two-hour detention law and was reasonably related in both time and manner to the suspicious circumstances on which it was initially based. After balancing the privacy rights of probationers¹⁶ and the governmental interests in enforcing a valid probation condition and insuring officer safety, this Court concludes that the governmental interests outweigh the brief and minimally intrusive detention. The Court holds that the initial detention was a lawful, limited intrusion reasonably justified under the circumstances. Based upon the totality of these circumstances, Muniz lawfully detained Garvin in accordance with 11 *Del. C.* 1902.

¹⁵ See *State v. Biddle*, 1996 WL 527323, at *6 (Del. Super.).

¹⁶ See *Griffin*, 483 U.S. at 875 (stating that supervision of probationer is a special need of the state permitting a degree of infringement upon privacy that would not be constitutional if applied to public at large).

B. The Warrantless Search Of Garvin’s Residence Was Reasonable Under the Fourth Amendment Because It Was Supported By Reasonable Suspicion And Authorized By A Condition Of Probation

The Defendant argues that the evidence against him should be suppressed because the probation officer did not follow departmental procedure for conducting a search and seizure of his house. Specifically, Garvin contends that the factors assessed for the Pre-Search Checklist and authorization were based on the conduct of Spencer. The United States Supreme Court addressed the issue of whether a search of a probationer’s home violated the Fourth Amendment of the United States Constitution in *Griffin v. Wisconsin*.¹⁷ As stated in *Griffin*, a State’s operation of a probation system, like its operation of a school, government office or prison, or its supervision of a regulated industry, presents special needs that may justify departure from the usual warrant and probable cause requirements.¹⁸ Probation is a form of criminal sanction.¹⁹ Probationers do not enjoy “the absolute liberty to which every citizen is entitled, but only conditional liberty properly dependent on observance of special [probation] restrictions.”²⁰ Restrictions are meant to assure that the probation serves as a

¹⁷ 483 U.S. 868 (1987).

¹⁸ *Griffin*, 483 U.S. at 873-74.

¹⁹ *Id.*

²⁰ *Id.* at 874.

period of genuine rehabilitation and that the community is not harmed by the probationer's being at large.²¹ "Supervision, then is a 'special need' of the state permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large."²² Thus, the Court in *Griffin* upheld a search of a probationer conducted pursuant to a Wisconsin regulation permitting "any probation officer to search a probationer's home without a warrant as long as his supervisor approves and as long as there are 'reasonable grounds' to believe the presence of contraband."²³ The Court, however, stated that the permissible degree of impingement upon privacy was not unlimited.²⁴

The legislative authority permitting probation officers to effect searches of the individuals they supervise is set forth in 11 *Del. C.*

§4321(d).²⁵ Pursuant to that authority, the Department of Correction has

²¹ *Id.* at 875.

²² *Griffin*, 483 U.S. at 875.

²³ *Id.* at 870-871.

²⁴ *Id.* at 875.

²⁵ 11 *Del. C.* §4321(d) provides:

Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment and shall execute lawful orders, warrants and other process as directed to the officer by any court, judge or Board of Parole of this State; however, a probation and parole officer shall only have such power and duties if the officer participates in and/or meets the minimum requirements of such training and education deemed necessary by the Department and Board of Examiners.

adopted regulations regarding warrantless searches of probationers. As explained in *McAllister v. State*:²⁶

Those regulations provide that, prior to a personal search or a living quarters search, the probation officer and the supervisor “shall have a case conference” and “the Pre-Search Checklist should be used as guideline unless emergency circumstances dictate otherwise.”²⁷ Further, “before any search is conducted, Officers must first have the approval of a supervisor or designee, unless emergency circumstances dictate otherwise.”²⁸

In deciding whether there are reasonable grounds to believe an offender is violating conditions of supervision, possesses contraband, or that an offender’s living quarters or property contains contraband, Department of Correction Procedure 7.19 (“DOC factors”) requires Officers to consider the following ten factors: (1) observations by a staff member; (2) information provided by an informant; (3) the reliability of the information; (4) the reliability of the informant; (5) the activity of an offender that indicates the offender might possess the contraband; (6) information provided by the offender which is relevant to whether the offender possesses contraband; (7) experiences of probation officers with an offender; (8) prior seizures of

²⁶ 807 A.2d 1119, 1123 (Del. 2002).

²⁷ See Dept. of Correction Procedure 7.18.

²⁸ See Dept. of Correction Procedure 7.19.

contraband from an offender; (9) whether the offender has signed Conditions of Supervision; and finally, (10) the offender's prior conviction pattern.²⁹

The Court first addresses whether there was a reasonable basis to conduct a search of Garvin's residence. P & P Officer Hunter prepared the administrative form to search Garvin's residence, not at the request or demand of the Wilmington Police Department, but upon P& P's own initiative. As indicated by the Pre-Search Checklist: 1) an active warrant/capias existed; 2) there was reason to believe that Garvin was engaged or about to be engaged in substantial risks to the community; 3) there was reason to believe that Garvin possessed contraband; 4) Garvin was in violation of probation; and 5) information provided by an informant had been corroborated. Hunter reasonably believed, based on experience, that Garvin was engaged in illegal activity and was violating the conditions of probation. In addition, as part of the conditions of Garvin's probationary sentence, P & P was authorized to search his residence. Thus, applying the DOC factors to this case, it appears that there were reasonable grounds to search Garvin's home. Furthermore, in accordance with P & P procedures, supervisory approval was obtained before the search of Garvin's residence. Therefore, the Court concludes that the probation officers followed the

²⁹ *Id.*

established procedure and complied with the necessary guidelines upon conducting an administrative search of Garvin's residence. Therefore, the search was lawful and reasonable. For all of the foregoing reasons, the Defendant's Motion is hereby **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.