IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE	)	
	)	
v.	)	Case No.: 0004006788
	)	
HAROLD TORRES,	)	
	)	
Defendant.	)	

Date Submitted: December 26, 2000
Date Decided: January 2, 2001

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ORDER AND DECISION
ON MOTION TO SUPPRESS

A hearing on defendant's Motion to Suppress took place in this Court on December 6, 2000. Following the receipt of evidence and testimony, the Court reserved decision. This is the Court's Final Order and Decision.[1]

[1] Defendant served a copy of his Motion to Suppress on the Attorney General on October 18, 2000. At the hearing on the Motion to Suppress, the Court requested the Attorney General to file a written response to Mr. Foley's Motion within ten (10) days. On December 19, 2000 following the request by the Attorney General for an extension, the Court signed an Order granting the State until December 26, 2000 to file its response.

The Facts

Delaware River and Bay Officer Karen Camp ("Officer Camp") was duly sworn and testified. She testified that she was working in her capacity as a Delaware River and Bay Authority Police Officer, Troop 1, on the Delaware Memorial Bridge on the date charged in the Information, April 10, 2000. She testified that she was in her patrol vehicle and was enforcing radar in a stationary mode on I-295 northbound near Route 9.

Officer Camp testified that she performed a traffic stop on the defendant ("Torres") who was allegedly speeding while driving a Chevrolet four-door, white motor vehicle, with Florida tags. Officer Camp testified that she observed Torres driving his motor vehicle at a high rate of speed and thereafter used her hand-held laser and clocked the defendant driving at 74 miles per hour.

The defense stipulated on the record to the speed 74 miles per hour, and that the summons was not disputed or a material issue in this proceeding.

Officer Camp testified that she pulled behind the defendant and turned on her overhead lights and made contact with the defendant. Officer Camp testified that she requested Torres' driver's license, registration, and insurance card. She testified that "back-up" Officers thereafter arrived at the scene. Officer Camp testified that she believed it was suspicious that the defendant requested to walk around the front of

his motor vehicle in order to secure his registration and insurance card from his glove box in the front of the passenger seat.

Officer Camp testified that she then went back to her motor vehicle and "all checks were fine." Officer Camp testified that she prepared a summons for Torres for speeding at 74 miles per hour, and she testified she then requested the defendant to sign a Consent to Search Warrant.

Officer Camp testified that the sole reason for her request to Torres to sign the Consent to Search Warrant was that it was "unusual for Torres to get out of his motor vehicle in order to secure the registration and insurance card from the glove box."[2] Officer Camp further testified there was "nothing obstructing the glove box" so that the defendant could obtain the insurance and registration card from the driver's seat of his motor vehicle. Officer Camp testified that she read the Consent to Search Warrant to Torres; underlined portions of it that indicated the defendant could refuse to sign the warrant; and the defendant signed the same.

Officer Camp testified that based on the search, she found certain items and listed the same as articles taken as evidence in the return of the warrant. These items included one (1) switchblade; eleven (11) cell phones in the trunk and passenger compartment; two (2) pagers from the front seat of the vehicle; two (2) checkbooks in the truck; three

[2] Torres had already provided his driver's license to Officer Camp.

(3) credit cards in the trunk; and fifty-eight (58) driver's licenses and IDs from various States. The switchblade was found in the glove box. Officer Camp testified that she also signed and executed the Consent to Search form.

Officer Camp testified that she had employed "normal procedures" before she presented the Consent to Search Warrant to the defendant including inquiring whether the defendant had "anything illegal" in his motor vehicle.

On cross-examination Officer Camp testified that she does not recall a duffle or trash bag in the right passenger seat. She also testified that there was nothing in her executed Consent to Search Warrant form that "anything was suspicious" and that the defendant acted "normally" in obtaining his driver's license, registration and insurance card. Officer Camp testified that the defendant's motor vehicle search and warrant search while in her patrol vehicle did not come back "29 positive" and Torres' vehicle also came back "29 negative." Officer Camp testified that she underscored on the Consent to Search form given to the defendant "I have the right to refuse giving my consent to search."

Torres testified at the suppression hearing that he was "pulled over" by Officer Camp on April 10, 2000 and that there was a big garbage bag in the right seat that prevented him from obtaining driver's license, registration and insurance card. Torres testified further that he gave Officer Camp all his motor vehicle documents, including driver's

license, registration and insurance. He testified that he also signed the summons.[3]

Torres testified that Officer Camp told him that "It was standard procedure to search a car that is going across State lines." When he was asked to sign the Consent form Torres testified Officer Camp's request "sounded like a command and was very authoritative." Torres also testified that "he did not understand" the Consent to Search Warrant. Torres testified that Officer Camp took all of his property of his motor vehicle and Torres "put it on the highway." Torres testified further that he "did not know" he had the opportunity to decline the search and did not read the Consent to Search Warrant because he "was tired" and "it was nighttime" and he had been on a "long journey." Torres also testified that there is an armrest next to his driver's side that prevented him getting into the glove box, as well as a trash bag full of shoes, clothes, sneakers, etc. and both prevented his access to the glove box on the dash in the front seat on the passenger side of his motor vehicle.

Officer Camp was recalled to testify on rebuttal. Officer Camp testified that "there was no garbage bag" in the front seat and that she explained the Consent to Search Warrant to Torres and "told him to read it." Officer Camp also testified that she asked Torres orally if she had permission to search his car and he indicated in "the affirmative."

[3] Officer Camp testified that during the search canine dogs were also on the scene.

The Law

Established case law provides that in deciding a motion to suppress, the defendant bears the burden of establishing that the challenge, search or seizure violated his Fourth Amendment rights. *State v. Thompson,* Del. Supr., Cr. A. No. IN92-07-0022-0025, Goldstein, J. (March 14, 1994), Mem. Op. (citing *Rakas v. Illinois,* 439 U.S. 128, 130 N.1 (1978). It is the defendant who must prove by a preponderance of evidence that he is entitled to the requested relief. *State v. Bien-Aimen Smalls,* Del. Super., Cr. A. No. IK92-08-0326, Tolliver, J. (March 17, 1993) Mem. Op. (citing *United States v. Castenenda,* 5th Cir., 951 Fed.2d 44 (1992).

In this proceeding, Torres has moved to suppress all the evidence seized as a result of the stop by Officer Camp. First, defendant argues that the consent was not voluntarily given because it was an illegal seizure. Second, Torres argues that Officer Camp had no authority to request a consent to search seizure because there was no reasonable articulable suspicion that criminal activity "was afoot." Torres argues that Officer Camp was merely on a "fishing expedition" after a traffic stop and that after a traffic summons was issued, Officer Camp had no legal authority to further detain him. See, *State v. Huntley,* Del. Super., 2000 WL 710183, Babiarz, J., (May 23, 2000).

"A person is considered 'seized' under the Fourth Amendment when, in view of all the circumstances surrounding the incident, a reasonable person would not feel free to leave." *Michigan v. Chesternut,* 486 U.S. 567, 573 (1988) citing *United States v. Mendenhall,* 446 U.S. 544, 545 (1980); *State v. Morris,* Del. Super., Cr. A. No. 9610010320, Goldstein, J. (May 14, 1997), Op. and Order.

Discussion

The sole dispositive issue before the Court is whether Officer Camp had a reasonable suspicion that a crime has or was about to be committed when she detained Torres when she issued the traffic summons.[4] To be specific, the issue presented is whether Officer Camp had a particularized and objective basis "for suspecting Torres was involved in criminal activity when she issued him a traffic summons for speeding and had a further legal basis to detain him." See, *United States v. Cortez,* 449 U.S. 411, 417-18 (1981); *Robertson v. State,* Del. Supr., 596 A.2d 1345, 1350 (1991); *Houston v. Clark County,* 174 F.3d 809, 813 (6th Cir. 1999).

After a close reading of the legal authorities set forth by the Superior Court in *Huntley,* this Court must conclude that the State has not set forth in the record a reasonable articulable suspicion that Torres was involved or about to be involved, under the totality of the

[4] As case law provides, there must be more than an ill-defined hunch under the totality of circumstances to constitute a reasonable suspicion.

circumstances, in criminal activity when he was issued the traffic summons. Nor has the State set forth "a particulized and objective basis for suspecting Torres of criminal activity following the traffic summons." The only thing that "seemed suspicious" is that Torres, following the directions of Officer Camp to produce his registration and insurance card, exited his motor vehicle and went to the glove box to locate the subject documents. At oral argument on the Motion to Suppress, the Court requested the State to particularize in the record the allegedly suspicious criminal activity involved when Torres exited his motor vehicle to retrieve the requested motor vehicle documents. The State did not particularize any suspicious articulable criminal activity. The Court finds that Torres' conduct in retrieving his registration and insurance documents, absent some further reasonable articulable suspicion of criminal activity detailed by the State, did not warrant further detention.[5]

The State has not particularized any crime in the trial record that Torres was engaging in criminal activity when he provided Officer Camp his registration and insurance documents from his glove box.[6] In

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[5] In the Attorney General's December 26, 2000 response, the State argues that the "only issue for this Court to decide is whether the consent to search Torres' vehicle was voluntary and if so whether the subsequent consensual search is tainted by an illegal detention." (Paragraph 1, p. 2, State's Response.) The State further argues that *Knight v. State,* Del. Supr., 690 A.2d 929 (1996) applies and that Torres' execution of the consent to search was voluntary and not the result of duress or coercion.

The State also argues that in *Huntley,* no consent to search was signed. However, at p. 2 of the Court's opinion, the facts indicate, after initial refusal, "Mr. Huntley signed a 'Delaware State Police Consent to Search' form at 6:38 p.m. with Ms. Miller and Mr. Martin signing as witnesses."

[6] When questioned by the Court as to what suspicious or criminal activity Torres was about to engage in by exiting his motor vehicle to obtain the requested documents, the

fact, Torres was exiting his motor vehicle for the purposes of following Officer Camp's request for his registration and insurance card. As the Superior Court noted in *State v. Huntley*:

> The majority of Courts that have cited tandem driving, conflicting stories, and/or general nervousness as factors supporting a finding of reasonable suspicion have done so only in conjunction with other more tangible, objectively articulable indicators of criminality, such as driving with a suspended license, failure to provide proof of ownership of the vehicle, or the probable odor of alcohol or drugs or air freshener, often used to mask the smell the marijuana and cocaine. See, *United States v. Sharp,* 470 U.S. 675, 682 (1985).

None of these factors are present in the existing record.[7]

There is no doubt there was a basis for the initial traffic stop of Torres for speeding. However, once Officer Camp provided Torres with a copy of his traffic summons, there was no further reason to detain him. As defendant has particularized in his Motion, after the traffic summons was issued, the stop became an illegal seizure because Office Camp had no reason to detain Torres.[8] Therefore, no reasonable articulable suspicion existed to require Torres to sign the Consent to Search form. As the Court in *Huntley* ruled, ". . . consent that is given by a person

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State, in closing arguments, did not particularize a crime or "suspicious criminal activity."

[7] See also footnotes 19 and 20 in *Huntley* for the list of citations which provide reasonable articulable suspicion or criminal activity or the basis for detention.

[8] As set forth in *Huntley,* "If a person is lawfully stopped for a traffic violation, the officer may detain the individual only as long as necessary to effectuate the purpose of the stop. (See, *Florida v. Royer*, 460 U.S. 491, 500 (1983). If during the stop the officer further detains the person in order to investigate other possible crimes, the officer must have a reasonable articulable suspicion that additional criminal activity is afoot. See, *Terry v. Ohio,* 392 U.S. 16 (1968).

that is being illegally detained is tainted by the illegality and is thus ineffective to justify the search." *State v. Morris,* Del. Super., Cr. A. No. 9610010230, Goldstein, J. (May 14, 1997) (Op. and Order); *State v. Wrightson,* Del. Super., 391 A.2d 227, 228 (1978); *Mapp v. Ohio,* 367 U.S. 643 (1961).

In considering the totality of circumstances, Torres has proven by a preponderance of evidence that he is entitled to the requested relief. The Court hereby GRANTS Torres' Motion to Suppress for all the evidence seized listed in the Consent to Search Warrant.

IT IS SO ORDERED this 2nd day of January, 2001.

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JOHN K. WELCH
ASSOCIATE JUDGE