

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

v.

TYLER SCOTT,

Defendant.

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ID No. 1906004690  
In and For Kent County

**ORDER**

Submitted: January 10, 2020

Decided: January 14, 2020

***Upon Defendant's Motion to Suppress***  
**GRANTED**

On this the 14th day of January, 2020, having considered Defendant Tyler A. Scott's (hereinafter "Mr. Scott") motion to suppress and the State's response, as well as the evidence and arguments presented at the hearing on January 10, 2020, it appears that:

**Brief Factual Summary**

1. On June 6, 2019, an anonymous tipster informed the Smyrna Police Department that a white male and a black male were selling drugs from a white vehicle with a dent on the driver's side door near the park in the Green Meadows Development in Smyrna, Delaware. Corporal Steven Howey-Newcomb of the Smyrna Police Department was dispatched to the area, but when he arrived, there was no white vehicle present.

2. On June 7, 2019, Corporal Howey-Newcomb was dispatched to the same area in response to a second anonymous tip that a white male and a black male were selling drugs from a white vehicle with a dent on the driver's side door. It was not

known, however, whether the anonymous tipster was the same individual who had called the day before.

3. Corporal Howey-Newcomb activated his vehicle's emergency lights and made contact with the driver of the white vehicle (hereinafter the "Vehicle"), Mr. Scott, and its passenger, Malik Rothwell. Corporal Howey-Newcomb was familiar with Mr. Scott because he was a confirmed SMG gang member who had previously been arrested for marijuana possession and firearm-related offenses, and because an illegal firearm had been found in the Vehicle in connection with the previous arrest, which had occurred in April 2018. Corporal Howey-Newcomb was also familiar with Mr. Rothwell as he, too, was a confirmed SMG gang member.

4. Corporal Howey-Newcomb ordered both men out of the Vehicle.

5. Corporal Howey-Newcomb began a search of the Vehicle because another officer at the scene, Sergeant Walton, had detected an odor of marijuana coming from inside the Vehicle. Corporal Howey-Newcomb discovered illegal narcotics, a firearm, and ammunition in the Vehicle.

### **Arguments of the Parties**

6. Mr. Scott moves to suppress the seized evidence on the grounds that the police did not have reasonable suspicion to seize his person, rendering all seized evidence the fruit of an unconstitutional search and seizure.

7. The State responds that the motion to suppress should be denied because the police corroborated the tip and therefore had reasonable suspicion to seize Mr. Scott.

## Discussion

8. The burden is on the State to justify a warrantless search or seizure.<sup>1</sup> In a suppression hearing, the Court sits as the finder of fact and evaluates the credibility of the witnesses.<sup>2</sup> The party with whom the burden rests must persuade the Court by a preponderance of the evidence.<sup>3</sup>

9. Here, the Court finds that Mr. Scott was seized when Corporal Howey-Newcomb activated the emergency lights on the police vehicle.<sup>4</sup>

10. Next, the Court finds that the anonymous tip does not support a finding of reasonable suspicion.

11. Police are authorized to rely on an informant's tip as a basis for probable cause or reasonable suspicion, when shown to be reliable or trustworthy through the tip's specificity, corroboration by other facts within the officer's knowledge, and ability to predict the future behavior of the suspect.<sup>5</sup>

12. In *Flonnory v. State*,<sup>6</sup> the Delaware Supreme Court found that the police did not have reasonable suspicion to conduct an investigatory stop under facts similar to those in the present case. In *Flonnory*, the Wilmington Police Department had received an anonymous tip that an individual in a gray vehicle at a specific intersection "possessed an 'illegal substance.'"<sup>7</sup> The anonymous caller also provided the license tag number of the vehicle.<sup>8</sup> Upon arrival at the scene, the police

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<sup>1</sup> *State v. Bordley*, 2017 WL 2972174, at \*2 (Del. Super. July 11, 2017) (citing *State v. Holmes*, 2015 WL 5168374, at \*3 (Del. Super. Sept. 3, 2015)).

<sup>2</sup> *Id.* (citing *State v. Hopkins*, 2016 WL 6958697, at \*2 (Del. Super. Nov. 28, 2016)).

<sup>3</sup> *Id.* (citing *State v. Lambert*, 2015 WL 3897810, at \*3 (Del. Super. June 22, 2015)).

<sup>4</sup> *See State v. Roberts*, 2001 WL 34083579, at \*3 (Del. Super. 2001) (holding defendant was seized when officer activated her emergency lights).

<sup>5</sup> *Bordley*, 2017 WL 2972174, at \*2 (citing *State v. Saunders*, 2012 WL 6915206, at \*3 (Del. Super. Dec. 28, 2012); *Jones v. State*, 745 A.2d 856, 870 (Del. 1999)).

<sup>6</sup> 805 A.2d 854 (Del. 2001).

<sup>7</sup> *Id.* at 855-56.

<sup>8</sup> *Id.* at 856.

confirmed that the aforementioned vehicle and its tag number matched the descriptions that the anonymous caller had provided.<sup>9</sup> After approaching the vehicle and posing questions to the driver and his passenger, the police ordered the occupants, including the defendant, out of the vehicle and discovered various drug paraphernalia therein.<sup>10</sup> Upon review of the anonymous tip, the Court held that the police did not have reasonable suspicion to detain the defendant based on the tip because it “offered no indicia of reliability.”<sup>11</sup> The Court noted that the anonymous tip contained details that would be “readily observable to anyone who saw the appellant[,]” and that upon arrival at the scene of the alleged crime, the police “failed to observe any illegal activity that, standing alone, would have warranted detaining” the defendants.<sup>12</sup> The Court granted the defendant’s motion to suppress.<sup>13</sup>

13. In *Florida v. J.L.*, as well,<sup>14</sup> the United States Supreme Court found that the police did not have reasonable suspicion for an investigatory stop under facts similar to those in the present case. In *J.L.*, the Miami-Dade Police had received an anonymous tip that a black male in a plaid shirt was standing at a particular bus stop and carrying a gun.<sup>15</sup> Upon arrival at the bus stop, the police identified a black male in a plaid shirt, seized him, frisked him, and found a firearm in his pocket.<sup>16</sup> The Court held that an anonymous tip that fails to provide predictive information, enabling the police to determine the reliability and knowledge of the tipster, does not provide reasonable suspicion.<sup>17</sup> The Court noted that because the tip was limited

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 860.

<sup>12</sup> *Id.* at 859.

<sup>13</sup> *Id.* at 860.

<sup>14</sup> 529 U.S. 266 (2000).

<sup>15</sup> *Id.* at 268.

<sup>16</sup> *Id.*

<sup>17</sup> *Flonnory*, 805 A.2d at 858 (citing *J.L.*, 529 U.S. at 271-72).

solely to information regarding the location and appearance of the suspect, it was insufficient to provide the police with the requisite reasonable suspicion to seize the defendant.<sup>18</sup>

14. In *Alabama v. White*, an anonymous tipster had stated that the defendant would be leaving a named apartment complex “at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey’s Motel, and that she would be in possession of about an ounce of cocaine inside a brown attaché case.”<sup>19</sup> The officers immediately proceeded to the apartment complex, saw the defendant driving a vehicle matching the description, and observed the defendant proceed directly to the predicted destination.<sup>20</sup> Although the Court in *White* considered it “a close case,” the tip’s prediction of the defendant’s movements at a specific time, in a specific vehicle, and to a specific destination, followed by independent police investigation, exhibited sufficient indicia of reliability to support reasonable suspicion.<sup>21</sup>

15. Here, the tip contained very few details, alleging only Mr. Scott’s current location and the physical features of his person, his passenger, and the Vehicle. As in *Flonnory*, the information in the tip was “readily observable to anyone who saw”<sup>22</sup> Mr. Scott and had no predictive value because it conferred information “discernable to any member of the public.”<sup>23</sup> The tip’s lack of detail and predictive information “left the police without means to test the informant’s knowledge or credibility.”<sup>24</sup> Indeed, if the facts in *White* made the Court’s decision a “close case,” then the facts

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<sup>18</sup> *Id.* at 859 (citing *J.L.*, 529 U.S. at 270-72).

<sup>19</sup> 496 U.S. 325, 327 (1990).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 332.

<sup>22</sup> *Flonnory*, 805 A.2d at 859.

<sup>23</sup> *Bordley*, 2017 WL 2972174, at \*3.

<sup>24</sup> *J.L.*, 529 U.S. at 271.

here, as in *J.L.*, “surely fall on the other side of the line.”<sup>25</sup> Therefore, the tip in the present case was insufficient to support reasonable suspicion.

16. Next, the police failed to corroborate sufficiently the anonymous tip. Here, Corporal Howey-Newcomb noted that Mr. Scott and Mr. Rothwell were confirmed SMG gang members and had committed firearm and drug-related crimes. While gang membership alone is insufficient to support reasonable suspicion,<sup>26</sup> here Corporal Howey-Newcomb also knew of Mr. Scott’s prior criminal record. However, a *prior* arrest or police encounter is insufficient to support reasonable suspicion at the *present time*.<sup>27</sup> Therefore, the police failed to corroborate the anonymous tip.

17. To the extent that the State argues that the tip was corroborated because the officers matched the information in the anonymous tip to the Vehicle’s description, location, and occupants, the Court finds this argument unpersuasive. While it is true that the tip accurately described the Vehicle, its occupants, and location, these “readily observable facts”<sup>28</sup> were accessible to the general public and failed to provide any form of predictive information. Indeed, as the Court in

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<sup>25</sup> *Id.*

<sup>26</sup> *See State v. Jones*, 835 P.2d 863, 867 (N.M. Ct. App. 1992) (rejecting prosecution’s argument that it should find gang membership alone sufficient to support reasonable suspicion); *see also U.S. v. Daniel*, 804 F. Supp. 1330, 1335 n. 10 (D. Nev. 1992) (“It is clear however, that *Terry* and its progeny require *some* degree of particularized suspicion beyond gang membership alone.”) (emphasis in original).

<sup>27</sup> *See Daniel*, 804 F. Supp. at 1335 n. 10 (“One’s status as a gang member, however, *even a gang member with a known arrest or conviction record*, does not, without more, create the reasonable and articulable suspicion necessary to justify an investigative detention.”) (emphasis supplied); *see also Chandler v. State*, 132 A.3d 133, 149 (Del. Super. 2015) (rejecting State’s argument that defendant’s nervous behavior, use of alias, use of rental vehicle, and *prior criminal history* were sufficient to support reasonable suspicion of *current* criminal activity supporting detention of defendant); *see also U.S. v. Alvarado*, 989 F. Supp. 2d 505, 519 (S.D. Miss. 2013) (holding defendant’s prior arrest did not give rise to reasonable suspicion of criminal activity to justify continued detention during routine traffic stop).

<sup>28</sup> *Flonnory*, 805 A.2d at 858.

*Flonnory* stated, “the simple confirmation of readily observable facts does not enhance the reliability of an anonymous tip to the level required for a finding of reasonable suspicion.”<sup>29</sup> Additionally, the facts within the tip in the present case are akin to those of both *Flonnory* and *J.L.*, where an anonymous tip that merely provided information as to the defendant’s location and certain physical features did not support a finding of reasonable suspicion. Also, upon arrival at the scene of the alleged crime, the Smyrna police “failed to observe any illegal activity that, standing alone, would have warranted detaining”<sup>30</sup> the defendants. Therefore, as in *Flonnory* and *J.L.*, the tip and police corroboration in the present case were insufficient to support reasonable suspicion to seize Mr. Scott.

18. The Court finds that the State has failed to meet its burden to overcome Mr. Scott’s motion to suppress. Therefore, all evidence seized as fruit of the unconstitutional seizure of Mr. Scott’s person will be suppressed.

**WHEREFORE**, for the foregoing reasons, Mr. Scott’s motion to suppress is **GRANTED**.

**IT IS SO ORDERED.**



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Judge Noel Eason Primos

NEP/wjs

oc. Prothonotary  
Gregory R. Babowal, Esquire  
Stephanie H. Blaisdell, Esquire

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 859.