EFiled: Jan 17 2014 01:54PM EST
Filing ID 54865187
Case Number 603,2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANZARA BROWN	:	
	:	
Defendant Below,	:	
Appellant,	:	
	:	
v.	:	No. 603, 2013
	:	Filing ID No. 54840995
STATE OF DELAWARE	:	
	:	
Plaintiff Below,	:	
Appellee.	:	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

APPELLANT' OPENING BRIEF

SANDRA W. DEAN [#2860]
12322 Willow Grove Road
Camden, Delaware 19934
(302) 697-6716

DATED: January 7, 2014 Attorney for Appellant

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TABLE OF CITATIONS

NATURE AND STAGE OF THE PROCEEDINGS

The Defendant Anzara Brown (hereafter "Brown") was arrested on May 31, 2012. He was subsequently indicated for the following offenses:

- Racketeering, 11 Del.C. Section 1503
- Possession of Marijuana, 16 Del.C. Section 4764(a)
- Drug Dealing, 16 Del.C. Section 4752(1)
- Aggravated Possession 16 Del.C. Section 4752(3)
- Carrying a Concealed Deadly Weapon, 11 Del.C. Section 1442
- Possession of a Deadly Weapon During Commission of a Felony, 11 Del.C. Section 1447
- Possession of a Deadly Weapon by Person Prohibited, 11 Del.C. Section 1448
- Conspiracy Second Degree, 11 Del.C. Section 512
- Criminal Solicitation Second Degree, 11 Del.C. Section 502

The State entered a nolle prosequi to Racketeering before trial and Possession of a Deadly Weapon by Person Prohibited after sentencing. The Court ruled that Criminal Solicitation merged into Conspiracy. Brown was convicted of the other charges after a jury trial.

The State moved to have Brown sentenced as an habitual offender under 11 Del.C. Section 4214 (a) and 4214 (b). He was sentenced to two life sentences. Exhibit A (sentence) attached.

A Notice of Appeal was docketed. This is Brown's opening brief on appeal.

SUMMARY OF THE ARGUMENTS

1. The Trial Court abused its discretion by admitting evidence obtained as a result of a traffic stop and subsequent arrest of Brown. During surveillance of the home of Galen Brooks, target of their investigation, police observed Brown at the property but did not observe a drug transaction. Shortly before, a court ordered wiretap had intercepted conversations between Brooks and an unknown male. Despite the fact the police did not know the identity of the person talking to Brooks, the fact that another known drug suspect was seen at Brooks' house in the same time period, and the fact that they did not know Brown's identity, nevertheless police stopped and arrested Brown without probable cause.

2. The Trial Court abused its discretion by admitting into evidence telephone calls between Brown and Brooks which were intercepted pursuant to a wiretap. The wiretap Order was expanded to include a number which was not directly linked to the target [Brooks] on the mere suspicion that Brooks was using this number in drug activity.

3. The Trial Court abused it discretion by admitting into evidence cocaine allegedly seized from Brown despite an inadequate chain of custody. There was a significant discrepancy between the description of the cocaine on the evidence envelope and the description of the cocaine in the medical examiner's report.

STATEMENT OF FACTS

For a period of several months in 2011 and 2012, the Delaware State Police were investigating Galen Brooks, a suspected major drug dealer in Kent County. The investigation included undercover buys, confidential informants, video surveillance of Brooks' home in Dover, and court ordered wiretaps on Brooks' phones. A-48-52 and A-69-73

On May 31, 2012, officers were listening in real time to Brooks talking on his phone (535-9787) to an unknown male on a phone with number 670-1756. There were four calls between 15:13 and 17:35 p.m. The unknown male placed an order for drugs and stated that he would pick them up at Brooks' house. A-48-52

Meanwhile, another officer was conducting video surveillance at Brooks' home. At 17:46, a black male known to police to be John Price, was observed leaving Brooks' residence. Three minutes later a van arrived driven by a black male unknown to the police, later identified as Anzara Brown. Brown was observed talking to Brooks outside the residence, and they were out of camera view briefly. About 17:57, Brown left in his vehicle. A-54-62

An officer, Sergeant Skinner, followed Brown and stopped his vehicle at 18:05. Skinner told Brown that he was stopped due to a problem with his tag, but at trial Skinner admitted that there was no problem with the tag, and he stopped

Brown because he "felt that he had just purchased drugs from Galen Brooks".A-63-68 and A-74-75

Brown was in possession of 23.23 grams of cocaine, a small amount of marijuana and brass knuckles. In a statement to police, he admitted his intention to sell the cocaine, and he gave police his cell phone number, which was the number recorded on the wiretap. A-63-68 and A-74-75.

Brown was arrested and released on unsecured bail.

1. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING ALL EVIDENCE OBTAINED AS A RESULT OF A TRAFFIC STOP AND SUBSEQUENT ARREST OF BROWN.

QUESTION PRESENTED

The question presented is whether the Trial Court abused its discretion in admitting evidence obtained as a result of a traffic stop of Brooks. The question was preserved for review by the Defendant's Motion to Suppress which was denied by the Trial Court. Exhibit B.

STANDARD AND SCOPE OF REVIEW

The standard of review of the Trial Court's factual findings is abuse of discretion. In light of the factual findings, the reviewing Court conducts a de novo review to determine whether the totality of the circumstances support a reasonable and articulable suspicion for the stop. Jose Lopez-Vazquez v. State of Delaware, 956 A 2d 1280 (Del. Supr. 2008).

ARGUMENT

On May 31, 2012, pursuant to a court ordered wiretap, police intercepted four calls between Galen Brooks (the target of the wiretap) and an unknown male. Police had no knowledge whatsoever of the identity of the person talking with Brooks. It was only later, after the arrest of Anzara Brown, that the caller was

identified as Brown.

The caller ordered drugs from Brooks and Brooks instructed him to come to Brook's home on Huntley Circle to pick up the drugs. The caller replied that he would be there in a few minutes. A-48-53

Police had Brooks' home under surveillance by video (not audio) in real time. About 15 minutes after the last call, Brown arrived in a green van.

The video shows that another man, identified as John Price, was also at the residence and was seen leaving in a black vehicle. There was no evidence of how long Price had been at the location. Price was a person known by police to be an associate of Brooks. Because drug dealers often change phones, it was not known whether or not Price was the caller recently talking to Brooks.

Video surveillance shows Brown, his wife and Brooks talking for a few minutes outside the residence. For a brief period they are out of camera range. No exchange or transaction whatsoever is observed. A-54-62

Brown left Brooks' residence about 10 minutes later. He was followed and stopped by Sergeant Lance Skinner. A-63-68

Skinner admitted that no traffic violation occurred, although he told Brown that there was "something wrong" with the vehicle tag. Brown was searched and found to be in possession of drugs. The State does not claim that this was an investigative stop. Skinner asserted that he had probable cause to arrest Brown at

the time of the stop. The defense disagrees.

To establish probable cause, police must present facts suggesting that a fair probability exists that the defendant has committed a crime. Jarvis v. State, 600 A. 2d 38 (Del. 1991). In Jarvis, the defendant was a passenger in a vehicle stopped due to valid reasonable suspicion of the driver. Drugs were then found on Jarvis' person. In the case at bar, the State asserts that probable cause for arrest existed when they stopped Brown's vehicle, despite the fact that they did not know his identity; they did not know if he was the unknown caller on the wiretap, and no drug transaction had been observed at Brooks' home.

Probable cause is determined based on the totality of the circumstances, as viewed by a reasonable police officer in the light of his training and experience. Miller v. State, 4 A. 3d 371 (Del. 2010) . It is possible that several factors may be insufficient individually but may add up to reasonable suspicion. However, a combination of wholly innocent factors cannot combine into reasonable suspicion (let alone probable cause) absent concrete reasons for such an interpretation Jose Lopez-Vasquez v. State, 956 A.2d 1280 (Del. 2008).

In Jones v. State, 745 A. 2d 856 (Del. 1999), the defendant was detained subsequent to an anonymous 911 call reporting "a suspicious black male wearing a blue coat" in a high crime area. The arresting officer did not know the identity of the person he detained. The Court held that reasonable suspicion for the detention

was lacking. Similarly, the unknown male talking to Brooks was "anonymous" insofar as his identity was unknown to police. When police observed Brown at Brooks' residence, they did not recognize Brown nor identify him as a known suspect in drug activity. No criminal activity was observed. Using information from the tag on Brown's vehicle police could have applied for a warrant, or they could have obtained more information in order to investigate Brown. Their conclusion that they had probable cause was premature and incorrect.

Both the Trial Court and the State have cited State v. Stanley Lum, 1978 WL 187981 (Del. Super. 1978). Exhibit C. In Lum, the defendant was arrested without a warrant in a case involving a court-ordered wiretap. The Superior Court upheld the arrest as supported by probable cause. Notably, the decision was not subjected to appellate review. Even more significantly, the facts in Lum are very different form the facts leading to the arrest of Brown.

Lum was the main target of a drug investigation. The suspected headquarters of the operation was a grocery store where police obtained a wiretap on the telephone. Lum was heard in numerous conversations with other known drug dealers, and his identify in the calls was clear. Police then obtained a wiretap at Lum's apartment, which resulted in interception of more incriminating calls. Lum was placed under surveillance and police observed him with scales used in

drug transactions. Police followed Lum's vehicle and the vehicle changed directions several times in an attempt to evade police. The vehicle was then stopped and Lum was arrested.

The contrast between the facts leading to Lum's arrest and the arrest of Brown emphasize the lack of probable cause in Brown's case. Lum was a known target of the wiretap, Brown was not. Lum was identified on the wiretap, and Brown was not. Lum was observed in possession of drug paraphernalia (scales) and Brown was not. Lum's vehicle was observed making suspicious moves, but Brown's vehicle was not.

Police could have continued to investigate after obtaining the tag number of the vehicle driven by Brown. Instead, they detained and arrested him in violation of his constitutional rights. All evidence obtained subsequent to the arrest, including but not limited to the drugs and statement given by Brown, were the fruits of the illegal arrest.

2. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING INTO EVIDENCE TELEPHONE CALLS BETWEEN BROWN AND GALEN BROOKS INTERCEPTED BY A COURT-ORDERED WIRETAP.

QUESTION PRESENTED

The question presented is whether the Trial Court abused its discretion by admitting calls obtained in a court ordered wiretap. The question was preserved for review by the Defendant's motion to suppress which was denied by the Trial Court. Exhibit D.

STANDARD AND SCOPE OF REVIEW

The standard of review of the Trial Court's legal decisions is de novo. The standard of review of the Trial Court's factual findings is abuse of discretion.

ARGUMENT

In th drug investigation which led to Brown's arrest, the target was Galen Brooks, an upper level drug dealer in Kent County. In the period from January to May 2012, police monitored three telephone numbers associated with Brooks, using a court-ordered pen register trace. Hundreds of incoming and outgoing calls were recorded.

In May 2012, a caller on one of Brooks' number (5082) called an unknown number (6753). The person using 6753 then called 9787. Police obtained an order to intercept calls on 9787 based on mere suspicion (not probable cause) that 9787

was being used by Brooks.

On May 31 and June 1, calls were recorded of Brooks, using 9787, speaking with Brown. These calls led to Brown's arrest. A.69-73

The question is, how wide a net may be constitutionally cast by a wiretap? Delaware's wiretap statute requires that there be "probable cause for belief that particularly communications concerning the offense will be obtained through the interception." 11 Del.C. Section 2407 (c) (1) (b). The statute contains its own exclusionary rule, providing that any aggrieved person may move to suppress evidence obtained in a wiretap on the grounds that the call was unlawfully intercepted. This statutory rule is broader than the general exclusionary rule under the Fourth Amendment. U.S. v. Giordano, 416 U.S. 505 (1974)

A roving wiretap allows police to follow a target across multiple telephone accounts if it is suspected that the target is changing lines or numbers. The danger is that the person with whom the target speaks may be themselves making calls completely unrelated to any criminal activity. For example in the case at bar, police did not know the identity of the persons using numbers 6753 or 9787. They could have been Brooks' doctor, his lawyer, or his dry cleaner. The risk of intercepting calls with innocent persons increases the further the wiretap "roams" from the target. This risk was predicted by the U.S. Supreme Court when the Court referred to electronic surveillance as "dirty business" in Olmstead v. United States, 277 U.S

438 (1928). Even with the requirement of minimalization, it is troubling that innocent people are at risk of having their calls intercepted at all.

The suspicion that the target may be using new phones, without proof or even probable cause, should not justify a court order to intercept the calls of an unknown user.

3. THE TRIAL COURT ABUSED ITS DISCRETION BY ADMITTING THE COCAINE INTO EVIDENCE WHEN THE STATE FAILED TO ESTABLISH AN ADEQUATE CHAIN OF CUSTODY

QUESTION PRESENTED

The question presented is whether the Trial Court abused its discretion by admitting cocaine allegedly seized from Brown despite issues with the chain of custody. The question was preserved for review by an objection to the evidence, which was over ruled by the Trial Court. Exhibit E.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review is abuse of discretion.

ARGUMENT

The State proferred as evidence cocaine purported to be that seized from Brown. The evidence envelope, Exhibit G at trial, described the contents as follows:

#1 bag containing approximately 3.7 gm crack cocaine.

#2 bag containing 3 individual bags:

Bag A - Approximately 8.2 gm crack cocaine.

Bag B - Approximately 8.1 gm crack cocaine.

Bage C - Approximately 1.2 gm powder cocaine. Exhibit F

The Medical Examiner's report, Exhibit H at trial, described the cocaine as follows:

C-I One plastic bag of white powder 0.67 gm.

C-II Three plastic bags each containing an off-white chunky substance Total 15.53 gm. Exhibit G

The actual cocaine introduced at trial was examined and described by Officer Lance Skinner as "four bags of crack and one bag of powder." A.74-74

There are two discrepancies between the envelope and the M.E. report. First, the individual bag (#1 on the envelope and C-I on the M.E. report) is described on the envelope as "approximately 3.7 gm crack cocaine" and on the M.E. report as "white powder 0.67 gm."

The second bag contained 3 small bags, which are described on the envelope as 2 bags of crack cocaine and one bag of powder cocaine. On the M.E. report, they are described as three bags of "chunky substance".

Brown objected to the admission of the evidence and the objection was over-ruled. Exhibit E

In order to authenticate evidence pursuant to D.R.E. 901 (a) the proponent must present other evidence sufficient to prove that the item is what the proponent

claims, in this case the same cocaine seized from Brown. The State may authenticate the evidence by establishing a chain of custody "which indirectly establishes the identity and integrity of the evidence". Tricoche v. State, 525 A. 2d 151. (Del.Supr. 1987)

In Tricoche, three relevant factors were set forth to be considered in analysis of a chain of custody: (1) the nature of the article; (2) the circumstances surrounding its preservation in custody; and (3) the likelihood of intermeddlers having tampered with the article. Tricoche citing Whitfield v. State, 524 A. 2d 13 (Del.Supr. 1987). The State must eliminate possibilities of misidentification as a matter of reasonable probability.

The relevant factor which demonstrates misidentification in the case at bar is the "nature of the article", in this case the cocaine. In regard to the single bag, the weight discrepancy (approximately 3.7 gm on the envelope and 0.67 gm on the M.E. report) is very significant. Some weight difference is understandable because scales and methods of weighing may differ, however, this weight difference is substantial. Even more important, crack cocaine cannot transform into powder cocaine, nor vice versa.

In George Loper, Jr. V. State, 637 A. 2d 827 (Del.Supr. 1994) the Court reversed Loper's conviction in part because the State failed to demonstrate an adequate chain of custody. In that case, the cocaine sold to an undercover officer

was described as "a small white chunky substance". The Medical Examiner, however, stated that the evidence envelope contained a powder substance. The Court held that this discrepancy "overwhelmingly suggests that the possibilities of misidentification and adulteration of the evidence were not eliminated as a matter of reasonable probability". Loper, 637 A.2d 827 (Del.Supr 1994).

In the case at bar, discrepancy in the form of the cocaine appears twice. First, was the individual bag seized crack or powder, and second, were there three small bags of crack, or two small bags of crack and one small bag of powder? No matter how certain the officers may be about their handling of the evidence, it is a physical impossibility that the cocaine introduced into evidence was that seized from Brown.

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's convictions and sentence should be reversed.

Respectfully submitted,

s/s Sandra W. Dean (# 2860)

Attorney for Defendant

12322 Willow Grove Road

Camden, DE 19934

Dated: January 7, 2014

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J. Benson
DATE: 11-22-13

STATE OF DELAWARE

VS.

ANSARA M BROWN

Alias: See attached list of alias names.

DOB: 08/11/1969
SBI: 00306847

CASE NUMBER:
1205025968A

CRIMINAL ACTION NUMBER:
IK12-06-0541
DDEAL TIER 2+AF(F)
IK12-09-0212
TIER 5 POSS(F)
IK12-09-0214
PDWDCF(F)
IK12-09-0213
CCDW(F)
IK12-09-0216
CONSP 2ND(F)
IK12-09-0211
POSS MARIJ+AF(M)

COMMITMENT
SEE NOTES FOR FURTHER COURT ORDER-TERMS/CONDITIONS
Nolle Prosequi on all remaining charges in this case

SENTENCE ORDER

NOW THIS 29TH DAY OF OCTOBER, 2013, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. Costs are hereby suspended. Defendant is to pay all statutory surcharges.

AS TO IK12-06-0541- : TIS
DDEAL TIER 2+AF

Effective September 11, 2013 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for the balance of his/her natural life at supervision level 5 with credit for 3 day(s) previously served

- The defendant is declared a Habitual Offender and is sentenced pursuant to 11 Del. C. 4214(b) on this charge.

Exhibit A

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J. Burns
DATE: 11-22-13

"The Life sentence imposed herein is not subject to the award of good time."

AS TO IK12-09-0212- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for the balance of his/her natural life at supervision level 5

- The defendant is declared a Habitual Offender and is sentenced pursuant to 11 Del. C. 4214(b) on this charge. "The Life sentence imposed herein is not subject to the award of good time."

AS TO IK12-09-0214- : TIS
PDWDCF

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

- The defendant is declared an Habitual Offender and is sentenced pursuant to 11 Del.C. 4214(a) on this charge. Life is not subject to the award of Good time. (A sentence less than life under(a) is eligible for good time.)

AS TO IK12-09-0213- : TIS
CCDW

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- The defendant is declared an Habitual Offender and is sentenced pursuant to 11 Del.C. 4214(a) on this charge. Life is not subject to the award of Good time. (A sentence less than life under(a) is eligible for good time.)

AS TO IK12-09-0216- : TIS
CONSP 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 2

AS TO IK12-09-0211- : TIS
POSS MARIJ+AF

- The defendant is placed in the custody of the Department of Correction for 6 month(s) at supervision level 5

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

- Suspended for 1 year(s) at supervision level 2

The level 2 probation is concurrent to any level 2 under criminal action number IK12-09-0216

SUPERIOR COURT OF DELAWARE
KENT COUNTY

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J. Barnes
DATE: 11-22-13

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

CASE NUMBER: BY: J. Berman
1205025968A
DATE: 11-22-13

Have no contact with Galen Brooks

Defendant loses driving licenses/privileges pursuant to statute Title 21 Sect 4177 K .

Be evaluated for substance abuse and follow any recommendations for counseling, testing or treatment deemed appropriate.

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

All Court costs deemed uncollectible.

All financial obligations for this case are deemed uncollectible.

NOTES

While at Level V the defendant shall undergo both mental health and substance abuse evaluations and follow any recommended treatment.

The Department of Correction shall notify this Court if any aspect of this sentence cannot be fulfilled.

As to criminal actin number IK12-09-0217, Crim Solic 2nd was merged with criminal action number IK12-09-0216, Consp 2nd, pursuant to 11 Del. C. 206(b)(2). No further informaiton provided on these charges.

JUDGE JAMES T VAUGHN JR.

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

CASE NUMBER:
1205025968A

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED

TOTAL CIVIL PENALTY ORDERED

TOTAL DRUG REHAB. TREAT. ED. ORDERED

TOTAL EXTRADITION ORDERED

TOTAL FINE AMOUNT ORDERED

FORENSIC FINE ORDERED

RESTITUTION ORDERED

SHERIFF, NCCO ORDERED

SHERIFF, KENT ORDERED

SHERIFF, SUSSEX ORDERED

PUBLIC DEF, FEE ORDERED

PROSECUTION FEE ORDERED

VICTIM'S COM ORDERED

VIDEOPHONE FEE ORDERED

DELJIS FEE ORDERED

SECURITY FEE ORDERED

TRANSPORTATION SURCHARGE ORDERED

FUND TO COMBAT VIOLENT CRIMES FEE

SENIOR TRUST FUND FEE

TOTAL .00

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J. Brown
DATE: 11-22-13

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

CASE NUMBER:
1205025968A

ANZARA M BROWN
ANSARA M ROWN

SUPERIOR COURT OF DELAWARE
KENT COUNTY

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J. Beam
DATE: 11-22-13

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
ANSARA M BROWN
DOB: 08/11/1969
SBI: 00306847

CASE NUMBER:
1205025968A

AGGRAVATING
PRIOR VIOLENT CRIM. ACTIVITY
LACK OF AMENABILITY
NEED FOR CORRECTIONAL TREATMENT
REPETITIVE CRIMINAL CONDUCT

SUPERIOR COURT OF DELAWARE KENT COUNTY

CERTIFIED
AS A TRUE COPY
ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY
BY: J Beaver
DATE: 11-22-13

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNT

STATE OF DELAWARE,	)
	)
v.	)
	)
ANZARA M. BROWN,	)
(ID. No. 1205025968)	)
	)
Defendant.	)

Submitted: April 5, 2013
Decided: July 30, 2013

Nicole S. Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Sandra W. Dean, Esq., Camden, Delaware. Attorney for the Defendant.

Upon Consideration of Defendant's
Motion to Suppress
DENIED

VAUGHN, President Judge

Exhibit B

State v. Anzara M. Brown
ID. No. 1205025968
July 30, 2103

OPINION

This case is part of a large investigation into an alleged drug organization. As part of the investigation, the police wiretapped telephones of Galen Brooks pursuant to a wiretap warrant. On May 31, 2012, an unknown male allegedly set up a drug transaction with Brooks over the phone. The transaction was to take place at Brooks' residence in Dover. At 5:35 p.m., the unknown male called and informed Brooks that he would arrive at Brooks' house in approximately seven minutes. At 5:51, the police saw a male and female arrive at Brooks' house and leave six minutes later. The police stopped the vehicle after it left Brooks' house. The male occupant was the defendant, Anzara Brown. The police searched his person and found illegal drugs in his possession. Brown now moves to suppress the drugs that were found by the police on the ground that probable cause did not exist to justify stopping Brown's vehicle and searching his person.

FACTS

On May 31, 2012, Sergeant Lance Skinner of the Delaware State Police was listening to the telephone calls of Galen Brooks in real time through a wiretap. During that afternoon, Brooks spoke with a person named "Trell" over the phone on four separate occasions. The first phone conversation occurred at 3:13 p.m. At the time, the police were familiar with Brooks and his telephone number, but did not know the identity of the other caller. Over the course of the four phone conversations, Sergeant Skinner learned that Brooks was going to sell Trell certain amounts of cocaine and crack cocaine at Brooks' residence later that day. The last

phone call made by Trell occurred at 5:35 p.m. In that call, Trell informed Brooks that he would be arriving at Brooks' residence in seven minutes. Sergeant Skinner then passed this information onto several detectives who were at that time conducting surveillance of Brooks' house. Sergeant Skinner then left the location where he was listening to the phone calls and headed to Brooks' residence to be prepared to participate in a possible arrest.

Detective Jordan Miller of the Dover Police Department was conducting the surveillance of Brooks' residence through a video camera. The video shows that at 5:48 p.m. a man who the police knew to be John Price left Brooks' residence. The police were already familiar with Price and the phone numbers that he used based on their investigation. At 5:51 p.m., a male (later identified as Brown) and a female pulled into Brooks' driveway in a large green van. The male and female then went to the side of the house where the camera lost sight of them. After a few minutes, the two came around to the front of the house. Brooks then came out of his residence and made contact with Brown and the female, and all three of them went to the side of the house where the camera lost sight of them again. At 5:57 p.m., Brown and the female got back into the green van and drove away. One minute later, Brooks got into his vehicle and drove away from his home. This information was relayed by Detective Miller to Sergeant Skinner, who was en route to Brooks' residence.

Based on the above-mentioned telephone conversations and the appearance of the male and female at Brooks' residence, Sergeant Skinner concluded that probable cause existed to arrest the unknown male who had just left Brooks' residence on drug

charges. As Sergeant Skinner was arriving at the entrance of Brooks' neighborhood, he saw the green van leaving the neighborhood. He followed it for a few miles and then pulled it over. Sergeant Skinner told Brown that the registration sticker on the vehicle was expired and asked Brown to step out of the van to look at the tag. When Brown stepped out of his vehicle, Sergeant Skinner arrested him and searched his person, finding illegal drugs. At the suppression hearing, Sergeant Skinner admitted that Brown's vehicle tag was properly registered, but that he told Brown that it was not in order to separate Brown from the other occupant and get him out of the vehicle.

CONTENTIONS

Brown contends that there was no probable cause to arrest him and that the drugs should be suppressed, because the identity of the caller setting up the drug transaction with Brooks was unknown to the police at the time of Brown's arrest, and the police did not see a drug transaction take place during their surveillance. Brown further contends that the caller could have been John Price, because, as Sergeant Skinner testified at the hearing, most drug dealers use more than one phone to avoid detection by the police, and Price and Brown were spotted at Brooks' residence within minutes of each other.

The State contends that there was probable cause to arrest Brown before the vehicle was stopped because Brooks clearly discussed the sale of drugs over the phone with an unknown male and the police reasonably inferred that the unknown male was Brown, because he arrived at Brooks' residence close to the time that the caller said he would arrive to pick up the drugs. The State further contends that the

police reasonably ruled out Price as the buyer, because the police were aware of the numbers of the phones being used by Price and were aware that the number for the phone being used by the unknown caller was not one of Price's.

DISCUSSION

Police officers may arrest individuals if the officer has probable cause to believe that the individual has committed a crime.[1] To establish probable cause, the police need only present facts suggesting that a fair probability exists that the defendant has committed a crime.[2] The court determines probable cause based on the totality of the circumstances, as viewed by a reasonable police officer in the light of his or her training and experience.[3] "A finding of probable cause does not require the police to uncover information sufficient to prove a suspect's guilt beyond a reasonable doubt or even to prove that guilt is more likely than not."[4]

Based on the totality of the circumstances, I find that a fair probability existed that Brown purchased cocaine and crack cocaine at Brooks' house, and that when he departed probable cause existed to believe he was then in possession of the drugs just purchased. Here, Brooks and the unknown male caller discussed a drug transaction over the phone in several calls and planned for it to occur at Brooks' residence shortly after the last call. Brown then did in fact arrive at Brooks' residence shortly, that is

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[1] *Stafford v. State*, 59 A.3d 1223, 1228 (Del. 2012).

[2] *Jarvis v. State*, 600 A.2d 38, 42-43 (Del. 1991).

[3] *Miller v. State*, 4 A.3d 371, 373 (Del. 2010).

[4] *State v. Maxwell*, 624 A.2d 926, 930 (Del. 1993) (citing *Jarvis*, 600 A.2d at 43).

16 minutes, after the last call. The caller had given his estimated time of arrival as seven minutes, but I do not find the difference between seven minutes and 16 minutes to be significant. Given the timing of his arrival, it was reasonable for the police to infer that the unknown caller was Brown, and that, based on the content of the prior phone conversations, Brown and Brooks engaged in a drug deal when they disappeared around the side of Brooks' house for only a few minutes.

This Court has previously concluded that where parties plan a drug transaction in intercepted telephone conversations, and then meet as planned in the conversations, probable cause exists to believe that the meeting is to complete the transaction as planned.[5]

In reaching this conclusion, I also find that it was reasonable for the police to rule out Price, the only other male at Brooks' residence at or about the time of the planned transaction, as the unknown caller. The police were familiar with Price and the numbers of the telephones he used, and were aware that the unknown caller was not using one of Price's telephones. The portion of the tape played at the hearing does not indicate when Price arrived at Brooks' residence. He departed shortly before Brown's arrival. Although it can be argued that the unknown caller might have been Price using a new telephone with a number not previously known to the police, I find that the police acted reasonably in inferring that the unknown caller was not Price based upon their knowledge of his telephone numbers, and was instead someone else.

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[5] *State v. Lum*, 1978 WL 187981 (Del. Superior Ct. Nov. 22, 1978).

CONCLUSION

For the foregoing reasons, I find that the search was incidental to a lawful arrest. The defendant's Motion to Suppress is ***denied***.

IT IS SO ORDERED.

President Judge

oc: Prothonotary
cc: File

EXHIBIT C

STATE OF DELAWARE v. STANLEY LUM, et al.

Criminal Action Numbers I-77-11-0863, I-77-11-0864, I-77-11-0865, I-77-11-0866, I-77-11-0867, I-77-11-0868

SUPERIOR COURT OF DELAWARE, NEW CASTLE

1978 Del. Super. LEXIS 115

November 22, 1978, Decision Rendered

NOTICE:

THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

COUNSEL: [*1] NORMAN A. BARRON, ESQUIRE, CHIEF DEPUTY ATTORNEY GENERAL, for the State.

L. VINCENT RAMUNNO, ESQUIRE, JAMES E. HIGGINS, ESQUIRE, for the Defendant Lum.

BIGGS & BATTAGLIA, ROBERT K. BESTE, ESQUIRE, for the Defendant Bowers.

JUDGES: BEFORE: HON. BERNARD BALICK, J.

OPINION BY: BERNARD BALICK

OPINION

JUDGE'S DECISION

November 22, 1978

11:00 o'clock a.m.

In Chambers

PRESENT:

As noted.

BY JUDGE BALICK:

Let the record show that all the parties who had not waived appearance are present, except for Mr. Wilson, who left a message with my secretary that he was held up but that we should go ahead without him if he were not here since this is simply the announcing of the decision and he would talk to the other lawyers about what happened.

There are a number of issues which I will address in series. All of them relate to suppression applications except for one, and that is the motion to dismiss filed by Mr. Wilson. There are no other open motions to dismiss, and I planned on addressing the motion to dismiss first, but since that one was filed by Mr. Wilson, although we do have an understanding that all the defendants may consider themselves protected by all motions, I think I will change the order and defer addressing the motion to dismiss [*2] until the end, in case Mr. Wilson does come.

So that brings us to the motions seeking suppression of evidence, and in summary they are as follows: There are motions to suppress use of recorded conversations under an authorized wiretap on the ground that there was not probable cause for the authorization, and on the ground that the interception was not "conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception..." That is the language of subsection (k) of section 1336 of Title II which I have just quoted. There are also motions to suppress evidence of certain items that were seized as a result of a warrantless arrest of defendants Lum and Bowers on October 15 and a search of the van that they were operating. Finally, there is a motion to suppress evidence seized in a motel room in Pennsylvania on that same date on the ground that the warrant authorizing that search is not supported by probable cause.

Exhibit C

Of course, there are further grounds based ultimately on the contentions with respect to the wiretap. In other words, it's contended that if the wiretap was unlawful then the later searches which were based on information [*3] obtained in the wiretap must also fall. What I am going to do is to try to address these chronologically, giving some factual background without falling into the minutia and large amount of detail that was necessarily addressed during the course of the hearings and argument.

There was a Court-ordered wiretap of a telephone in a grocery store on Madison Street on September 26, 1977 from 7:00 a.m. to 12:00 midnight every day, and there was an authorization for ten days. The issue of probable cause must be determined from the affidavit in support of that warrant. The affidavit is long and detailed, and rather than summarizing it in detail, I will simply state as a conclusion that, in my opinion, the affidavit and attachment supports the finding of probable cause and, in summary, I would point out that the affidavit seeks authorization to listen to conversations in the expectation that they will show a conspiracy to distribute narcotics, and the ultimate goal is to find the source of supply.

The main target of the investigation was the defendant Lum, and the affidavit goes into detail as to why they believed that he was the center of a conspiracy to distribute narcotics. The affidavit states [*4] that there had been an investigation ongoing for some 13 months, and that the normal techniques of investigation were unsuccessful, and the affidavit profiles some dozen or more persons believed to be participants. The probable cause is based ultimately -- and all such words have to be qualified because there are so many different details that corroborate aspects of this, but nevertheless, it's based ultimately on information supplied by three separate informants whose identity is not disclosed but, beyond the statement that the informants had proved reliable in the past by leading to the arrest and conviction of persons and seizure of drugs, there is a good deal of corroboration of their information, and specifically, there were controlled buys, and there was some basis for believing that Lum was involved, and there was the further information obtained from one of the persons arrested relating to Lum's activities at the M & M Grocery Store, which is the location of the telephone in question.

I believe that this summary will suffice since all of this is contained in the affidavit and there are other corroborating factors, such as analysis of toll calls and so forth, but I don't think [*5] it's necessary to further review the details in that affidavit, which I have read closely a number of times, at this point. At the conclusion of the original 10-day period there was an application for a 20-day extension, and in that affidavit there is further information supplied justifying the extension. There were conversations which were interpreted, and I believe reasonably in light of all the information, by the police officers to involve drugs, and these were connected and related to actual events which were observed by the police officers who made purchases by means of undercover officers. In this case there were conversations which the officers took to indicate that a purchase from the supplier was imminent, and in those conversations the defendants Bowers and Lum participated and were discussing the defendant Carter, who had been determined to have recently returned to Delaware from Columbia, South America.

So again, in summary, and without discussing all of the detail that is included in the affidavit, I conclude that there was probable cause for the 20-day extension of the authorization to eavesdrop at the telephone at Madison Street.

Now, the third warrant involved an application [*6] to eavesdrop at a different location, and this was an apartment which was used by Lum, who was the main focus of this investigation from the outset, and the existence of that apartment and telephone was discovered in the course of the original wiretap, and I think the conclusion of the officers that that telephone was more likely to be the one in which any discussion of a purchase of a quantity would be made is reasonable under all the circumstances.

Here again there is far more detail based on further information learned in the ongoing wiretap, and to some extent this is cumulative, but I see no point in discussing the detail beyond stating that after reviewing these applications closely, I conclude that this one, as well, shows probable cause.

Now, the net result of these authorizations was that the Madison Street telephone was being tapped from September 26, or shortly thereafter, until October 25, when the arrest of the defendants was made, and there was an overlapping, simultaneous wiretap at Spanish Oaks, where Lum apparently lived alone, from October 17, or shortly thereafter until October 25th. That is eight days. So that there was a total period of close to 30 days during which [*7] the police were listening to telephones, but during the last eight days they were listening to two telephones at one time.

Now, toward the end of the time in question, if memory serves me it was in the early morning hours, roughly 3:30 a.m. on October 25th, the police overheard a discussion between Bowers and Lum about a meeting with a person the police identified as Carter, although I believe he was referred to as "Kish," and this was believed, and I think reasonably under all the circumstanc-

es, by the police to be a meeting for the transfer of a quantity of drugs.

Based on that information, the defendants in question, namely Lum and Bowers, were kept under surveillance, and they did meet in accordance with their telephone conversations arranging the meeting, and the police saw in a large paper bag what they believed to be scales, which they understood to be what the defendants meant when they used the term, "baby," in their telephone conversations. They followed the defendants to the motel in Pennsylvania, where they saw Carter's car parked in the parking lot, and at the very same time they were attempting to get a search warrant through a magistrate in Pennsylvania, in the hope of [*8] executing it while all three defendants were in the motel room, but because of the time and practical problems they ran into in getting the affidavit prepared and presented to a magistrate and so on, they were not able to accomplish this, and they observed Lum and Bowers leave the motel room and start back toward Delaware, and after observing them changing directions a few times, which they interpreted to be attempts to evade any possible apprehension or, in any event, to disguise their activities, after the defendants returned to Delaware, and on route, they stopped the van.

In summary, what happened was that, as they approached the van they had the defendants get out and immediately saw that Lum had a revolver in his pocket, which they took, determined that it was loaded, and they saw in plain view what they suspected to be a scale was in fact the scales. They saw carrying cases and plastic bags and began to seize these items, but because of a traffic jam that was caused on a main artery, they moved the van to the Wilmington Police Department, where they continued the search of the van and, of course, found cocaine in the carrying cases. They found further quantities of cocaine in [*9] the van and on the person of the defendants.

In the meantime, the other officers involved entered the motel room and arrested Carter and waited with him close to five hours until they got word that the warrant for the search of the motel room had been signed, at which time they conducted a search and found paraphernalia and a large quantity of cocaine and money, and the largest quantity of cocaine was found in the ceiling of the motel room, behind one of the sections of the ceiling.

So, turning first to the warrantless arrest and search, I conclude that there was probable cause for the arrest and for the search, and the items seized, to some extent, fall in different categories, but I don't really think it's necessary to itemize them and mention which categories they fall into. In other words, a few of the items seized were in plain view, and there was no search at all. A few more of the items were justifiably seized under the incidental-to-lawful arrest exception to the warrant requirement. In other words, they were within easy reach of the defendants, but even the other items that were found in the van were within the exigent circumstances -- particularly motor vehicle -- exception, [*10] and the rationale for that exception is set out in the Chambers versus Maroney case, and I think under the circumstances it was perfectly reasonable to complete the search of the van back at the police station.

Finally, the inventory exception to the warrant requirement also applies. The van is subject to a forfeiture motion by the state and was obviously involved, in the commission of drug offenses and properly seized, and the police were authorized to thoroughly search it at that point. To some extent it is not necessary to spell out the probable cause, because with regard to this the probable cause contained in the affidavits for the wiretap warrants, as well as the information overheard, was all part of the basis and knowledge that the police officers had when they arrested the defendants.

Even if there had not been probable cause for arrest, which I believe there clearly was, there was certainly basis for stopping the defendants, and once the stop was made they saw the scales and the gun, and that certainly was clear corroboration of their suspicions from the outset, as confirmed by what they learned during the course of the wiretap, but, as I said, I believe they already had probable [*11] cause for the arrest itself.

They overheard a number of conversations which they interpreted to refer to a drug transaction at that time and place, and while an uninformed and inexperienced person looking at an isolated conversation might not have understood what it meant, with all the background knowledge, as contained in the affidavits, and all the corroboration and so on, I think these officers were justified in their, interpretation and therefore had probable cause to believe that the defendants were on the way back to Delaware with cocaine, having just made a purchase in the motel room, as in fact they were.

Now, the next issue deals with the warrant obtained for the search of the motel room, and I conclude that that warrant shows probable cause for that search. Here I think some of the maxims that are usually followed apply, that is a common-sense reading of the warrant, because the whole purpose of the suppression rule is to encourage the police to obtain warrants, and not to discourage them, and if you engage in a hypertechnical reading you do just that.

Now, in this case the officers involved went to great lengths to obtain that warrant, and practical problems in doing so quickly [*12] are demonstrated. In other words, what seems easy in hindsight is not so easy in

actuality, and here, as I mentioned before, the police actually waited in the motel room close to five hours before they could get the warrant. That is all a preface for saying that in hindsight, and with a careful analysis of the affidavit, one does recognize that it could have been even clearer than it in fact is in showing probable cause because of all the information we have, much of it contained in the previous affidavits in support of the applications for wiretap. It's clear that the officers actually had a good deal more than they were able to get into that affidavit under the pressure of the situation, but recognizing all that, I. think a fair reading of that affidavit shows probable cause.

The thrust of the defendants' position is that the officers merely state bald conclusions about the defendants, Lum, Bowers and, particularly, Carter, being involved in drugs. While it is true that the officers did state at the outset in conclusory language that they "know" that the defendants are involved in the distribution of drugs, there is sufficient corroboration within the warrant itself.

First of all, [*13] the officers explained that this knowledge comes through authorized wiretaps, and I think that is something that the magistrate who issued the warrant is entitled to consider. Secondly, they explain that the information as to Lum and Bowers was confirmed by actual observations. And finally, they state in the affidavit that Lum and Bowers were stopped and cocaine was seized on the way back from the motel room to Delaware. So I think with that corroboration and a common-sense reading, the affidavit certainly supported the finding of probable cause that the magistrate made.

Now, this brings us to the issue of minimization, which presents peculiar difficulties from a number of points of view, not the least being the difficulties of conducting the hearings on the motion, in view of the nature of the recordings and the difficulties of transcription and simply the volume of evidence because of the length of the taps. In basic summary, I think it's fair to say that the defendants' position is that a large percentage of the overheard conversations were not pertinent by the officers' own interpretation, that it should have been plain in many cases that they were not pertinent, and that there [*14] was an inadequate effort to avoid listening to those conversations, particularly with regard to the tap of the Spanish Oaks residence.

The officers testified that they listened to all conversations at Spanish Oaks, and the defendants offered evidence indicating that the officers' justification for doing that is not sound. In short, the officers explained that there was a call-waiting system at Spanish Oaks or, in other words, a telephone line in which two lines were actually used and the listener, while speaking in one conversation, will hear a noise indicating to him that someone else is calling and can push the plunger in and turn to the second conversation and then go back to the first conversation and have two separate callers on the line at one time.

It was the officers' impression that if they shut off any conversation they would not be aware of a second conversation coming in and, therefore, might lose important evidence. The defendants, however, called experts in telecommunications who have explained that a device can be constructed inexpensively that will permit the person eavesdropping to minimize the first call and be aware of when a second call comes in.

Before going into [*15] the facts anymore, let me make a few general observations. I have considered the cases cited. Of course the main case is the fairly recent Supreme Court case of Scott v. United States, as well as the one Delaware decision that touches on this issue, namely, State v. Vouras, and the cases that both sides discussed, namely, United States v. Bynum, which is found at 485 Federal Reporter, 2nd, page 490, and United States v. Falcone, which is found at *364 F. Supp, 877*, as well as the recent case that the State submitted yesterday because a call-waiting system was involved and considered in that case.

I think one can gather from these cases certain general principles. Of course the difficulties on this issue, as in many other areas of the law, is applying general principles to the facts of a particular case. The general principles seem to be that the ultimate question is whether the executing officers acted reasonably on an objective standard and many different factors that may be considered are discussed in these varying cases, but further, that the good faith of the officers is an important consideration in determining whether they acted reasonably, because of the peculiar practical difficulties [*16] in executing all wiretaps, which I will refer to somewhat, although I'm sure not fully, and because of the underlying purposes of the suppression rule, namely, deterrence of unlawful conduct.

Now, I have looked at the practical difficulties and I think these cases show an awareness and sensitivity on the part of the reviewing Courts to what these are. In other words, when the Fourth Amendment was drafted, it was drafted in terms of particularly describing things to be seized, and at that time no one could be aware of the modern phenomenon of electronic surveillance, and that language now has been applied to the seizure of conversations. There are certain analogies to the reasonableness of the execution of a warrant when things are involved, but there are also certain differences which require a somewhat different analysis, and if I can put it this way, I would point out the obvious, namely, that things are lo-

cated in space but conversations are located in time, and there is a certain pressure that one is under when one is concerned with conversations that are here for an instant and then gone.

I think we must be sensitive to this. Suffice it to say that with regard to some conversations [*17] listed as nonpertinent, where based on the summary in the log, one could wonder why that conversation was listened to for so long, I found that in listening it was easy to understand why that particular conversation was listened to for that long. There are a number of reasons.

For one thing, the parties aren't identified; for another, it's hard to even understand what they are saying, to some extent; and for a final reason, and I will come back to this in a few minutes, many of these discussions about irrelevant matters jump all over the place, and there are participants, in particular Betty Ann Rice, who I think it was obvious was an important message carrier, if nothing else, who sometimes relay or discuss messages long into conversations that dealt with irrelevant matters up to that point.

So there are a number of practical difficulties, and one must always be conscious that a review of the record with hindsight can be very misleading, and one must put oneself in the position of those who are going forward in the course of an investigation into the unknown.

Now, in an effort to deal with this minimization issue during this hearing, which, including argument, lasted at least part of [*18] 10 days, the Court listened to a number of conversations but also considered analyses prepared by both sides. The thrust of the defendants' analyses, which, unfortunately, were not submitted until after the hearing, and I think the better practice is to have the analyses submitted beforehand, is as follows: The one indicates that of the calls minimized, 34 percent violated the three-minute guideline that the police, themselves, used in consultation with the prosecutors. Another analysis shows that there was a pattern of long discussions between Betty Ann Rice and Rena Payne over the period of the wiretap, almost all of which were non-pertinent and very little of which was minimized, and that even those conversations were listened to for a long time.

The other analysis deals with many calls in the last week of surveillance, the point being that by then the executing officers should have understood enough about the callers and so on to have been able to be more restrictive in their listening. I will touch on these in series.

First of all, the three-minute guideline is just that; it has been discussed at some length. It has been criticized, and it obviously wasn't a binding rule on the [*19] part of the police themselves. The fact of the matter is that, although there has been much discussion about guidelines and standards, the cases have recognized that it's very difficult to develop guidelines ahead of time in a case such as this, where a conspiracy is involved, and one of the objects of the taps is to learn the extent of it and who was involved. In short, every one using the telephone is, to some extent, a suspect.

So the fact of the matter is that the officers were aware of the minimization requirement, discussed it with the prosecutors, and the superiors in charge of the wiretap instructed the junior officers, if I can use that term, and one of the guidelines they used was a three-minute rule, but this was not a binding rule, and, obviously, on many occasions conversations that were ultimately minimized were listened to for more than three minutes before that was done. I don't find that to be significant.

The cases have recognized as one of the practical problems that it takes some listening time to even make a determination on minimization, and it's simply hard to draw any hard and fast rule.

Now, with regard to discussions between Betty Rice and Rena Payne, I believe [*20] I listened to all of them, or almost all of them, and I think the defendants description of them is fair, that is, generally irrelevant, normal gossip, but it has been recognized in the cases, and I would agree on the facts of this case, that where a participant in the conspiracy is one of the parties to a conversation, there is justification for listening to conversations in which that person participates.

Now, like all other statements, that is not an absolute. If the conversation is clearly going to be with a party making it irrelevant, it should be minimized, and there was some minimization here, but I would point out that the investigation bore out the suspicions of the police that that phone was being used by Lum, and Betty Ann Rice was being used by Lum as a message carrier. Betty Ann Rice was profiled at the outset, and although Rena Payne, the other party to these conversations, wasn't profiled, she was mentioned in two of the affidavit's, and both she and Betty Rice were, obviously, intimate with the defendant, Lum, and aware of his habits and goings-on, and in listening to those discussions, one had the distinct impression that at any point the parties could have stated something [*21] that might well have been useful in the investigation.

Now, with regard to the analysis involving the last week at the Madison Street telephone, there are a few conversations that I think should have been minimized earlier, in hindsight. I am particularly referring to the one between Vanessa Stewart and her lawyer, which was minimized eventually. The defendants' analysis said that it was minimized at over nine minutes using the index method of estimating the time, but I must say that during

the course of the hearing I noted down that that conversation was four minutes, and I know we listened to the conversation, so it's my belief that we actually timed that conversation at four minutes, which simply means that the intrusion was somewhat less than the defendants' analysis suggests.

There is another one on October 25 between an unidentified female and a small child which was eventually minimized, and apparently, by the index method, that was after 13 minutes, and based on the description in the log I would think that that should have been minimized earlier.

There are a few more like that. I pointed out the ones that stick in my memory as particularly clear cases where there might have been [*22] earlier minimization, but I think the cases have recognized certain factors that are appropriately considered in determining whether the officers acted reasonably. One is that there has to be some play for plain human error. There has to be some consideration for mistake. We have been frankly told about a few in the course of this hearing, where the machine was turned off and they forgot to turn it back on, and so on, or the entry in the log was corrected. There has to be some consideration of plain human inattention. As defense counsel have themselves mentioned, listening to these conversations has-- well, I won't say spellbinding--let me say a hypnotic effect sometimes, and it's quite possible that sometimes the executing officer simply doesn't continue to maintain the kind of concentration necessary.

There was testimony that on October 24th and October 25th two inexperienced officers were monitoring the tape, and that might well account for the lapses that I have mentioned. So without going into any more detail, I think, basically, you have to make a judgment based on all the evidence, and here, where there was a conspiracy in which a number of persons were involved, and where the [*23] scope was not fully known, the lapses of minimization do not seem to me to be significant enough to justify a conclusion that the execution of the wiretap was unreasonable.

The basic problem you had with the Madison Street telephone was that it was a telephone in a business, and, apparently, no one was residing there, and it was constantly used by Lum to convey and pick up messages, but apparently, Betty Ann Rice, who the police had reasonable cause to believe was a conspirator, also used the phone for a lot of personal calls and, apparently, allowed unknown people, or at least people who it took some listening to identify, to use the telephone as well.

So you did get a fair percentage of non-pertinent calls on that telephone, but with the probable cause involved, and with the pertinent discussions and the belief that a transaction was imminent, I think all these factors support a finding that the police acted reasonably, and I will say in general, if it's not apparent already, I am satisfied, and I think it's an important finding, that the executing officers did, in good faith, attempt to comply with the minimization requirement which, for reasons I have already stated, is easier to [*24] state than to formulate clear-cut rules for.

Now, that brings us to the Spanish Oaks tap, and in a nutshell, the testimony of the officers was that they thought that they would lose calls if they minimized, because of the call-waiting system. Here again I have no reason to disbelieve that, and it does seem that they were concerned with the minimization requirement, and I don't think they are held to be experts in telecommunications.

They obviously weren't aware of any device that could have enabled them to minimize, and it seems, apparently, that the particular machine they had did not show them when a call was coming in on a call-waiting system, but I don't think a finding that the minimization on Spanish Oaks was reasonable has to rest on these facts alone, because in reviewing the whole course of this, I think it was reasonable for them to listen to all the conversations at Spanish Oaks.

As I mentioned before, they only found out about Spanish Oaks when they were well into the original taps. It is fairly plain that only the inner circle knew about the existence of that telephone. It's noticeable in the log that there was a higher percentage of pertinent discussions, and somewhat less [*25] guarded discussions, on the Spanish Oaks phone than over the Madison Street phone and, considering the information that the police already had leading them to believe that a purchase was imminent, I don't think it was unreasonable to listen as much as they did at Spanish Oaks, where the only party to all those calls was the main target of the whole investigation, namely, Lum.

Now, I have attempted to summarize the main factors in support of my conclusion on the minimization issue. I am certain that I have left some out Let me just mention a few more considerations, because I think it is important that each case be examined on its own facts.

There is no question that Lum was being very cautious. On a couple of occasions he even refers to his concern about talking on the phone. I think there is no question that code language was being used, as the police have said.

Now, there has been a good deal of examination, even ridicule, about the suspicions of the police, and I am well aware that you can't justify a search by what is obtained as a result of a search, but the hard fact of the matter is that their suspicions were born out during the

course of this investigation, and when they said [*26] they believed that "baby" meant scales, they were right. I don't have the date on the top of my mind right now, but they mentioned Carter and stated their belief that there was going to be a transaction with Carter in the affidavit well in advance of this arrest and seizure, and I believe's it's in the affidavit for the extension, and these things are born out not only by what happened, but by what they confirmed by surveillance and heard later and so on.

I would also point out further that while, to some extent, one must rest on the expertise of the officers making the interpretation because it's impossible to put the entire basis for that interpretation in the record, for many of these discussions nobody has suggested how they are to be interpreted if they are not to be interpreted as guarded discussions of drug transactions. Some of those conversations, in particular the one that led to this seizure, are incomprehensible on any other interpretation. For example, it's hard to know what one is to make of a discussion of a "600-pound baby."

Another point that I would like to make, and it's strewn throughout the affidavit and the record, is the way title to property was handled. All telephones [*27] were in the name of fictitious persons. Residences were in the name of fictitious persons, and this includes not only Lum but Bowers and others, and I think the inference that this was done in connection with drug activity is a fair one.

Finally, the whole history of the investigation over the 13 months before the first application was made I think amply supports the conclusion that Lum was cautious and even aware that he was being investigated, and this means that more scope is needed and is reasonable in using the wiretap as an investigative technique, and it would unduly restrict it if hindsight analysis were applied too strictly so as to destroy the effectiveness of the technique which had already been determined necessary by a neutral and detached magistrate, namely, a judge of the Superior Court.

There are many specific examples that could be given, but let me just mention that I think it's a fair inference that if the Court were to adopt as a hard guideline today, in this case, a three-minute rule, one might expect many telephone conversations in the future to get down to business, if I can put it that way, after three minutes. So one needs some flexibility in these matters if [*28] they are to be useful for their intended purpose.

Well, I think I have covered the minimization issue in sufficient detail, although as I said before, I am sure I have omitted spelling out some of the considerations that have actually gone through my mind, or specifying some of the facts in the record that I considered. There are two remaining issues. One is the motion for disclosure of informants. I believe that the State's letter, dated November 21, 1978, renders that motion moot. The one informant that appears to be discoverable was disclosed by the State. I don't believe that the factors mentioned in Mr. Thompson's letter, dated November 17, 1978, have any effect on this or require any hearings of any kind, and I believe the prosecutor's representation that there are no other informants in the categories requiring either disclosure or in camera inspection, is basis for not ordering any further disclosure.

Finally, there is the motion to dismiss that was filed by Mr. Wilson recently. Now, although this motion comes long after the deadline for motions to dismiss, it alleges that the indictment fails to state a charge and this kind of issue must be addressed at any time and is not waived [*29] by failing to raise it earlier. Since Mr. Wilson has not come, I will address the issue raised by this motion now.

The motion says that the charges of delivery or possession with intent to deliver are deficient in that they don't include a necessary element of the offense, namely, whether the defendant is addicted or not addicted, and that this omission prejudices the defendants. One case is cited. It's not important on the facts, but it does state the fundamental law and the necessity of alleging all the elements of the offense sufficiently so that the defendant is able to prepare a defense and is protected against possible jeopardy in the future. That is the underlying consideration.

The statute in question provides in subsection (a), and I refer to section 4751 of Title 16, for a penalty of not less than $5,000 nor more than $50,000 and imprisonment for not more than 25 years for delivery or possession with intent to deliver a narcotic where the person involved is addicted to narcotic drugs.

Subsection (b) provides for a substantially increased penalty for the same offense when the person is not addicted. That penalty is a fine of not less than $25,000 nor more than $100,000 and 30 [*30] years imprisonment without eligibility for parole.

Finally, in subsection (c) there is a provision that where death occurs there is even a more stringent penalty, namely, life imprisonment without eligibility for parole until 45 years have been served and parole for the remainder of the defendant's natural life, if there is parole.

Now, this statute is part of the Uniform Controlled Substances Act which has been in effect over five years, and there have been many prosecutions for delivery of narcotics, and so far as I know there has never been an issue raised or ruling made as to whether the fact that a defendant is addicted or not is an element of the offense.

I think this history of practice-is some indication, at least, that there has been no prejudice to defendants, because as a practical matter the State, so far as I know, has never alleged that a defendant is not addicted and has never sought more than the minimum possible category of sentence of the three I described for a delivery of narcotic drugs, and obviously, defendants have been content to be subject to the least of the three categories when convicted.

There is no question that there is curious draftsmanship involved in [*31] this section, but when we look at the obvious underlying purpose, and compare this section with some analogous provisions in Title ll, I conclude that the fact that a person is addicted is not an element of the offense, and the failure to allege that is not ground for dismissing an indictment, although it might well be that if the State seeks to impose one of the higher categories of punishment, it might be required to allege in the indictment and prove to the satisfaction of the jury beyond a reasonable doubt that the defendant is not addicted or that death occurred as a result of the use of the controlled substance.

I don't have to decide that in this case, but the point is that when one looks at the statute, it's rather plain that any other interpretation leads to serious practical difficulties, to no one's advantage. In short, if this were a necessary element of the offense, I assume that the State would allege that the defendant is not addicted in every case, and of course, the subject of the defendant's addiction would become a matter for the jury in every case, and if the State didn't prove beyond a reasonable doubt that the defendant was not addicted, I feel absolutely certain [*32] that it is the intent of the law that he would be subject to the lesser possible punishment, on the assumption that the delivery was proven beyond a reasonable doubt, as alleged.

In other words, if addiction were an element, I'm certain that the legislature didn't intend the defendant to be not guilty if it were not proven beyond a reasonable doubt that the defendant were not addicted or that he was addicted.

In short, when a person is not addicted, and if it's proven that they are not addicted, for obvious policy reasons, the legislature, wanted to treat that person -- or at least make it possible to subject that person to the dramatically increased penalties, and didn't mean that persons who deliver narcotics should go free simply because it's not known beyond a reasonable doubt whether the person is or is not addicted. I have referred to analogies under the offenses of rape and kidnapping and theft. I don't have these in front of me, but suffice it to say that when the criminal code, which was the product of careful draftsmanship by experienced people, was originally enacted, there was a provision that the degree of rape was increased -- or at least if not the degree, the possible punishment [*33] was increased if certain factors existed, one of them being injury to the victim, or past sexual conduct, and so on. Similarly, with kidnapping there was a potential increased penalty if "the victim was not released alive, safe, and unharmed," or words to that effect. These factors were not treated as elements of the offense, but rather as factors that bore on the sentence.

Now, it is true that later those sections were redrafted to make two separate offenses, but this is not what happened with respect to the present section, and really, the additional element really goes to sentencing rather than to the offense itself, and in the absence of proof beyond a reasonable doubt of the additional element, the defendant is guilty of the lesser offense; he is not acquitted completely. Considering the obvious underlying purpose, and by analogy with those sections, the same result should be achieved in the interpretation of this section.

Finally, theft provides that if the value of the property in question exceeds $300, it's a felony; otherwise, it's a misdemeanor, and this is all under one section, and these are not treated as elements, although there is a specific provision in the Code on evaluation [*34] that says, where there isn't sufficient evidence to determine the value beyond a reasonable doubt, then it's deemed that the property is worth less than $300. By analogy, the same kind of situation exists here. The value of the property is simply a matter of determining the degree of the offense and the level of possible punishment, and if the factor making the offense more serious is not proven, then it's deemed that the person is guilty of a lesser offense; he is not acquitted completely.

For all those reasons, the same result should be reached with regard to the section under consideration, and this construction is sanctioned by long practice in many cases, so I conclude that where the State is not seeking the greater possible punishment, as the State has represented is the situation in the present case, the allegation that the person is addicted is not an essential element of the offense, although where the greater punishment is sought, it might well be. We'll have to decide that when that issue is presented.

I believe I have decided all the pending pretrial issues, and what I'm going to do is to simply pull out the various motions in question and write "Denied..." on them, "... [*35] for reasons stated on the record on this date."

I believe we are free now to tell the case scheduling office to schedule the trial.

Thank you, gentlemen.

EXHIBIT D

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNT

STATE OF DELAWARE,	)
	)
v.	)
	)
ANZARA M. BROWN,	)
(ID. No. 1205025968)	)
	)
Defendant.	)

Submitted: April 5, 2013
Decided: July 30, 2013

Nicole S. Hartman, Esq., Department of Justice, Dover, Delaware. Attorney for the State.

Sandra W. Dean, Esq., Camden, Delaware. Attorney for the Defendant.

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

VAUGHN, President Judge

Exhibit D

State v. Anzara M. Brown
ID. No. 1205025968
July 30, 2103

ORDER

Upon consideration of the defendant's motion to suppress evidence, the State's opposition, and the record of the case, it appears that:

1. Defendant Anzara Brown ("Brown") moves for the suppression of telephone calls between Galen Brooks ("Brooks") and the defendant that were intercepted on May 31, 2012 and June 1, 2012. He contends that the warrant authorizing the wiretap of the phone number alleged to be Brooks', (302) 535-9787 ("9787"), was issued without probable cause.

2. The charges against Brown arise in the context of an extensive police investigation into an alleged drug trafficking syndicate in Kent County. The investigation largely focused on Brooks, who, at the time of the wiretap application, was believed to be the head of the alleged syndicate. The syndicate allegedly specialized in the distribution of cocaine and crack cocaine.

3. The State's Affidavit in Support of Application for Interception of Wire Communications (the "Affidavit") recounts the investigation into the alleged syndicate. The investigation began in 1996, and involved the use of physical and video surveillance, sixteen confidential informants, interviews with suspected associates of the alleged syndicate, pen registers, search warrants, an Attorney General Subpoena, controlled purchases of drugs by informants, and telephone calls intercepted pursuant to other wiretaps. The affiants are Detectives Jeremiah Lloyd and G. Dennis Shields of the Delaware State Police. The Affidavit is lengthy, consisting of more than eighty pages.

4. The State asserts that probable cause for the wiretap of 9787 derived from what investigating officers recognized as a pattern that Brooks used when informing his alleged associates of new telephone numbers. He would contact the other person on his current telephone number and ask if that other person noticed an unusual number calling. Within minutes, the unusual number and the other person would connect. The investigators knew, based on their training and experience, that drug traffickers purchase pre-paid cellular telephones in order to conceal their illegal drug dealing activities and avoid law enforcement detection. They also note that it is imperative for drug traffickers to contact associates in order to provide those persons with their newly acquired cellular telephone numbers. The Affidavit states that Brooks exhibited a consistent pattern of obtaining new pre-paid cellular telephones every forty-five days.

5. The Affidavit specifies three occasions where Brooks employed this tactic in an apparent attempt to transition from his (302) 222-5082 ("5082") number to 9787.[1] First, on May 22, 2012, at 8:32 AM, Brooks—from 5082—called an unknown male and asked that person if he saw a strange number on his phone. The unknown male responded affirmatively and Brooks told him to answer that number. The toll records associated with the unknown male's phone indicate that 5082 was in contact with him at 8:32 AM, and 9787 was in contact with him at 8:33 AM. A

[1] Investigators were monitoring 5082—and another number used by Brooks—with both a pen trap and trace device and a call interception device when the conversations that led to the application for a warrant for 9787 occurred. The pen trap and trace device for 5082 was installed on April 1, 2012, and law enforcement officers obtained court orders to intercept calls from 5082 on May 15, 2012. On May 21, 2012, the investigators began monitoring calls.

little later, at 8:51 AM, 5082 was again in contact with the unknown male, but no conversation took place. Immediately thereafter, still at 8:51 AM, 9787 was again in contact with the unknown male. The pen trap and trace device indicated that 5082 had been in contact with the unknown male's phone number approximately 115 times between April 1, 2012 and May 22, 2012. Next, also on May 22, 2012, at 8:48 AM, Brooks called another unknown male and advised him that Brooks would call right back. The toll records associated with this unknown male's phone show that 5082 was in contact with him at 8:48 AM, and 9787 was in contact with him at 8:52 AM. The pen trap and trace device indicated that 5082 had been in contact with this unknown male approximately 254 times between April 20, 2012 and May 22, 2012. Lastly, on May 22, 2012, at 10:14 AM, Brooks called another unknown male and advised that person that Brooks had been "blowing him up"—the affiants explain that this means frequently calling. Brooks then told the unknown male to answer the telephone. The toll records associated with this unknown male's phone indicated that 9787 was in contact with him at 8:37 AM and 10:09 AM. Immediately following the call with 5082 that was monitored at 10:14 AM, 9787 was in contact with the unknown male at 10:15 AM. The pen trap and trace device indicated that 5082 had been in contact with this unknown male approximately 166 times between April 1, 2012 and May 22, 2012.

6. The police applied for and acquired the warrant authorizing the wiretap of 9787 on May 25, 2012. As mentioned, the calls that the defendant now wishes to suppress took place on May 31, 2012 and June 1, 2012.

7. The defendant contends that the warrant was issued without probable cause to believe that communications from 9787 would reveal evidence of drug dealing. He contends that there was no evidence presented in the Affidavit that 9787 had called or been called from a number linked to Brooks. He specifically mentions the last of the three occurrences—he does not address the other two—, and argues that the police did not know the identity of either the unknown male or the person using 9787. He contends that 9787 was two steps removed from 5082, a number known to be Brooks,' and that this is too remote for probable cause to have existed. The State contends that the defendant is attempting to inflate the probable cause standard. It contends that Brooks' behavior as outlined in the Affidavit clearly demonstrated a pattern used to evade police detection of his illegal activities. It contends that there was probable cause to believe that the wiretap would lead to evidence of the syndicate's alleged drug trafficking.

8. "When presenting a motion to suppress evidence, the defendant bears the burden of establishing that the challenged search or seizure violated [his] Fourth Amendment rights."[2] However, once the defendant has established a basis for his motion, the burden shifts to the government to show that the search or seizure was

[2] *State v. Henson*, 1997 WL 817856, at *2 (Del. Super. Nov. 26, 1997).

reasonable.[3] "The burden of proof on a motion to suppress is proof by a preponderance of the evidence."[4]

9. Title 11, Section 2407 of the Delaware Code sets forth the probable cause requirements necessary to obtain the issuance of an order authorizing a wiretap:

> c) Issuance of order.--
>
> (1) Upon the application a judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or electronic communications . . . if the judge determines on the basis of the facts submitted by the applicant that:
>
> a. There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense enumerated in § 2405 of this title;
>
> b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;
>
> . . . .

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[3] *State v. Caldwell*, 2007 WL 1748663, at *2 (Del. Super. May 17, 2007) (quoting *U.S. v. Davis*, 2006 WL 229897, at *4 (D. Del. Jan. 30, 2006)).

[4] *State v. Abel*, 2011 WL 5221276, at *2 (Del. Super. Oct. 31, 2011) (quoting *State v. Iverson*, 2011 WL 1205242, at *3 (Del. Super. March 31, 2011)).

> d. There is probable cause for belief that the facilities from which or the place where the wire, oral or electronic communications are to be intercepted are being used or are about to be used in connection with the commission of the offense or are leased to, listed in the name of, or commonly used by an individual engaged in criminal activity described.[5]

"To establish probable cause, the police are only required to present facts which suggest, when *those facts* are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime."[6] The determination of probable cause by the issuing magistrate is entitled to great deference by a reviewing court.[7]

10. I conclude that the totality of the circumstances presented in the Affidavit demonstrate that there was a fair probability that communications intercepted pursuant to the wiretap of 9787 would reveal evidence of drug trafficking undertaken by the alleged syndicate. I further conclude that there was a fair probability that 9787 was a device commonly used by Brooks, himself. The

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[5] 11 *Del. C.* § 2407(c)(1). The defendant does not challenge subsection (c), which is known as the "necessity requirement."

[6] *State v. Maxwell*, 624 A.2d 926, 930 (Del. 1993).

[7] *State v. Perry*, 599 A.2d 759, 765 (Del. Super. 1990) (citing *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984)); *see also State v. Holden*, 60 A.3d 1110, 1114 (Del. 2013) (discussing search warrants in general, the court noted, "[a] court reviewing the magistrate's determination has the duty of ensuring 'that the magistrate had a substantial basis for concluding that probable cause existed.' A magistrate's determination of probable cause 'should be paid great deference by reviewing courts' and should not, therefore, 'take the form of a de novo review.'"(quoting *Illinois v. Gates*, 462 U.S. 213, 238-39 (1983))).

investigating officers utilized their training, their experience and their familiarity with the investigation to come to the conclusion that Brooks was attempting to pursue his drug business from a new pre-paid cellular phone. The Affidavit indicates that he had moved from one pre-paid cellular phone to another at regular intervals in the past. The three monitored conversations recited in the Affidavit were kept conspicuously short by Brooks, and served no discernable purpose other than to encourage the recipient to accept a call on a different number. Given the circumstances, both the brevity and the content of these conversations were highly suggestive of an intent to inform the other person that Brooks would be utilizing a new phone number to transact his drug business and keep one step ahead of law enforcement. Moreover, the volume of calls exchanged between 5082 and each of the three unknown numbers in the weeks leading up to the aforementioned conversations, when considered in combination with the content of the three conversations, was consistent with the theory that they were affiliates of the alleged syndicate.

11. I conclude that the Affidavit provided a sufficient factual basis for deciding that probable cause existed.

12. Therefore, the defendant's motion is ***denied***.

IT IS SO ORDERED.

President Judge

oc: Prothonotary
cc: Order Distribution
File

EXHIBIT E

THE COURT: You can see that -- that you use that term and then used for three and then powder for one.

THE WITNESS: Well, because it was clearly a powder.

THE COURT: The three of them look kind of similar.

THE WITNESS: If you look at them closely, they're all slightly different color; some off-white, some of them seem to be, like, bubbled porous, one of them might seem to be more waxy. It's not uncommon to have different textures in crack. It's very often cooked in somebody's kitchen or in -- and it depends on how thoroughly the chemical process going from one to the other and what adulterants are in there as to what would determine the color and the amount of either waxy or crackly or -- that's why we do the GC-MS analysis.

THE COURT: All right. Well, here -- I don't have any problem with Officer Skinner's handling of the substance, in other words, I don't think there's any reason to believe that he mixed it up, you know, with something else.

You know, you've got four different bags, I guess, all together and the witness has given some explanation

Exhibit E

for how one person might call something a powder and another person might call it an off-white chunky substance.

The evidence is that the envelopes were sealed and there's -- as soon as the officer took it into the police station, then the three officers including him, the two, and three if you count him, but two, began to document it and put it in its envelope. I don't think there's any reasonable possibility that the drugs got mixed up with some other drugs that were not on his person into those envelopes and from there the chain goes on without trouble.

I think the objection goes to the weight of the evidence. So your objection is overruled. The item will be admitted. I guess you can sort of put that stuff back together as best you can.

Are we ready for the jury?

MS. DEAN: Yes. I do have a few questions on cross of this witness.

THE COURT: I think the Loper case is a little different. There was a lot more handling by police officers, it appears, in that case.

Now, you had moved the admission of three

EXHIBIT F

DELAWARE STATE POLI

DE STATE POLICE EVIDENCE
1300001248

NCE

COMPLAINT NO. 03-12-101117

OCME initials

CS 12-20

C

DATE 5-31-12 TIME 1008 hrs

LOCATION

LOCATION

CHAIN OF CUSTODY

DATE TIME

DATE TIME

MEDICAL EXAMINER
ES LABORATORY

Exhibit F
to brief

(Exhibit G
At trial)

EVIDEN

1/23/12

EXHIBIT G

DELAWARE HEALTH AND SOCIAL SERVICES

OFFICE OF CHIEF MEDICAL EXAMINER
FORENSIC SCIENCES LABORATORY

Richard T. Callery, M.D., F.C.A.P.
Chief Medical Examiner
Director, Forensic Sciences Laboratory

Controlled Substances Laboratory Report
CONFIDENTIAL

Laboratory Case No.:	CS 122373 A-C	**Police Complaint No:**	0312101112
Case Name(s):	BROWN, ANSARA,	**Alias:**	
Agency:	DSP Troop 3	**Received from:**	WHEELER
County:	Kent	**Track:**	

Evidence Materials Examined:

Envelopes A through C are each sealed, initialed, and dated.

Evidence Description:

A. One plastic bag containing white powder with a net weight of 7.03 grams.
B. One plastic bag containing plant material with a net weight of 4.76 grams.
C. I. One plastic bag containing white powder with a net weight of 0.67 grams.
C.II. Three plastic bags each containing an off-white chunky substance with a total net weight of 15.53 grams.

Materials Analyzed:	**Drugs Detected:**
A. C.I. White Powder	Cocaine
C.II.(1-3) Off-White Chunky Substance	Cocaine
B. Plant Material	The evidnece described above contains portions of the plant Cannabis sativa L

Comments:
The OCME's Controlled Substances Unit's standard testing procedures may include:
- Screening tests (reagent color tests)
- Thin Layer Chromatography
- Microscopic Examination
- Gas Chromatography- Mass Spectrometry
- Gas Chromatography- NPD Detection
- FTIR
- Hypergeometric Sampling for Cases with multiple exhibits

Case Evidence Received:06/07/12 11:27 AM

P Phillips — 9/19/12

Patricia Phillips
Forensic Chemist — Date

Delaware Office of the Chief Medical Examiner
Forensic Sciences Laboratory
200 South Adams St.,
Wilmington, DE 19801

Exhibit G to brief

(Exhibit H at trial)