IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE COOPER, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)))))))))))	No. 261, 2019 ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE ID No. 1801007017

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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Dated: November 26, 2019

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I. THE STATE HAS MISCONSTRUED AND MISAPPLIED *State v. Bradley*, 2019 WL 446548 (Del. Feb. 4, 2019) IN ITS ANSWERING BRIEF.

There is not much dispute about the facts of this case or the appellate cases which control the central issues. One case which was not cited by the appellant, but which is relied upon heavily by the State, is *State v. Bradley*, 2019 WL 446548 (Del. Feb. 4, 2019). Appellant contends the State has misapplied the holding in *Bradley* to the case at bar.

To begin with, the standard of review in *Bradley* was different than the standard of review in this case because Bradley never filed a pre-trial motion to suppress evidence. As the Delaware Supreme Court stated in *Bradley*, "To warrant review on appeal when the issue has not been fairly presented [to the trial court], there must be plain error. Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Bradley*, 2019 WL 446549 at *3 (citations omitted).

Mr. Cooper did file a pretrial motion to suppress evidence, which the Trial Court denied prior to trial. Accordingly, where the facts are not in dispute and only a constitutional claim of probable cause is at issue, review of the Superior Court's ruling is *de novo*. *Valentine v. State*, 207 A.2d 566, 570 (Del. 2019), *LeGrande v. State*, 947 A.2d 1103, 1107 (Del. 2008).

Obviously, a different standard of review can result in a different outcome, so comparing the holding in *Bradley* to the case at bar is inapposite.

Leaving aside the different standards of review, the facts and holding in *Bradley* are distinguishable from the instant case even though they share similarities.

In *Bradley*, police received information from a past-proven reliable informant that Bradley was involved in marijuana distribution in Wilmington, and that Bradley possessed multiple firearms. The informant advised that Bradley lived in Southbridge and frequented a garage in the area of 13th and Locust Streets. The informant also advised "that s/he observed Bradley illegally purchase a gun from someone while inside the shop in the area of 13th and Locust Streets." Finally, the informant showed police a text from Bradley that indicated he was engaged in trafficking marijuana.

The police surveilled Bradley for two months where they saw him engage in what appeared to be drug transactions. They searched a garbage can in front of his suspected home and found drug paraphernalia consistent with packaging dugs for sale and a small piece of marijuana blunt. The

police then stopped someone they believed had just bought drugs from Bradley and found him in possession of marijuana.

Based on their surveillance and the informant's statements, the police sought and received a warrant for Bradley's home, car, and person. Police then arrested Bradley in his car where they found marijuana, a large amount of cash and a ring of keys. Police then searched his home where they found more marijuana and more cash. When police asked Bradley about the Locust Street garage he denied any knowledge of it.

The police then went to the garage on Locust Street (apparently, they knew the exact garage) and opened the lock to the garage with one of the keys that was on Bradley's key ring. The police then asked Bradley again if he leased the garage and he told them that he leased it with a friend to work on cars. At that point, police then sought a warrant to search the garage. The affidavit for the warrant did not mention the car in the garage. The warrant authorized the search of the building "including any/all curtilages." *Bradley*, 2019 WL 446549 at *6.

At some point, possibly before the issuance of the garage warrant, the police found that one of the keys taken from Bradley unlocked the car, and they searched a bag in the car and found a firearm. Bradley argued on appeal that evidence of the firearm should not have been admitted at trial

because it was gained unconstitutionally. The State contended that the evidence would have been discovered inevitably through lawful means.

Because Bradley had not filed a pretrial motion to suppress and there was no record about what the police knew at the time of the search or what they would have inevitably discovered after receiving a warrant for the garage, the Supreme Court held there was no plain error when the Superior Court permitted evidence of the firearm found in the car at trial. Essentially, the defendant's failure to raise the issue pretrial and create a record mandated the Court's finding on this issue. Again, such a finding is not applicable to the case at bar because Mr. Cooper filed a pretrial motion to suppress which was addressed by the Trial Court.

Second, Bradley claimed that the search warrant for the garage was invalid because it failed to: 1) show a nexus between the crime of drug dealing and the garage, and 2) state with particularity the vehicle within the garage that the police wanted to search. The first of these claims is similar to Mr. Cooper's argument that there was no nexus between suspected criminal activity and either Unit 8, or Apartment 1.

The Supreme Court found that the affidavit in support of the garage warrant in *Bradley* was adequate to form a reasonable belief that evidence of Bradley's criminal activity would be found in the garage for the following

reasons: 1) the affidavit stated police found individual bags of marijuana and large amounts of cash during searches of Bradley's person, car and residence (thus, the affiant presented hard evidence that Bradley was dealing marijuana); and 2) a past-proven informant observed Bradley illegally purchase a gun while inside the garage, and police had seen activity consistent with drug dealing in the garage while Bradley was there.

The Supreme Court noted that none of the cases Bradley cited to support the lack of nexus included visual observations of illegal or suspicious activity connecting the alleged criminal activity with the place to be searched, whereas in *Bradley*, the police provided at least two observations of illegal or suspicious activity at the garage (the gun purchase and the people going into and out of the garage quickly while Bradley was there). Accordingly, the Supreme Court held there was a nexus. *Bradley*, 2019 WL 445550 at *6.

In the instant case, Mr. Cooper acknowledges the police presented hard evidence that he was dealing drugs and possessed a firearm by citing the controlled buy in both the warrant applications. However, there was no information in the warrant applications which tied Unit 8 or Apartment 1 to suspected criminal activity because neither location was adequately

identified by the informant. Nor, did the police see any illegal or suspicious activity at either location.

Regarding Apartment 1, police did not report observing any suspicious activity even though the place was under surveillance for at least a couple of weeks. The State points to the fact that Mr. Cooper left his house with a white bag as he headed to the controlled buy, but the Superior Court has already rejected the argument that a known drug dealer being seen leaving a property with a bag is enough to support a warrant to search the property. *State v. Ada*, 2001 WL 660227 at *5 (Del. Super. June 8, 2019).

The State's argument is even weaker in the case of Unit 8. Not only did the police fail to allege observing any illegal or suspected activity at Unit 8 prior to the day of the controlled buy, but the only thing they witnessed Mr. Cooper do at Unit 8 was to go in and out of it briefly. Further, unlike in Bradley where the garage was identified particularly by the informant as being located at 12th and Locust Streets, and where the location was corroborated by using Bradley's key to unlock it, and then by Bradley's statement that he leased the garage, the informant in Cooper only identified seeing firearms in what appeared to be a car detailing shop near Governor Printz Boulevard. There is nothing to connect Unit 8 to the place that informant saw the firearms except that it was located near Governor Printz

Boulevard. There is nothing connecting Mr. Cooper to Unit 8, except that he went in and out of it briefly. He is not alleged to have used a key to enter. He is not alleged to have been seen there previously, and there is nothing else about Unit 8 to even suggest that it is a car detailing shop except the affiant's conclusory statement that the 8-unit complex contains a car detailing shop. Aside from the flimsy description of where the informant saw the firearms, it is worth noting again, that no time frame was alleged in the affidavit for when the informant saw the firearms so that information should not have even been considered by the Magistrate. Further, the informant in *Bradley* was considered past-proven reliable, but the reliability of the informant in Mr. Cooper's case was not proved because the claim the informant was past-proven reliable was not supported by particularized facts that would permit the Magistrate to make an independent judgement about reliability. *See*, *Valentine v. State*, 207 A.3d 566, 572-73 (Del. 2019).

Simply put, if Mr. Cooper had stopped at a Wawa, or a Walmart, or an unknown friend's house on the morning of the controlled buy instead of Unit 8 it is clear there would be no nexus to suspected criminal activity that would justify a warrant for one of those places. Similarly, there was no nexus between Unit 8 and suspected criminal activity and the warrant to search Unit 8 should not have been issued.

Finally, Mr. Cooper notes again that Paragraph 31 states the "affidavit only includes facts and circumstances establishing probable cause to substantiate the listed criminal offenses". It is Mr. Cooper's contention that the facts alleged were intended for an arrest warrant, not a search warrant. An arrest warrant would not have required a nexus between the location sought to be searched and criminal activity. Here, the police sought to stretch the facts supporting an arrest warrant into a search warrant, but they failed to adequately identify the place to be searched and the nexus between the place to be searched and contraband.

CONCLUSION

For the foregoing reasons, appellant, Mr. Cooper, respectfully requests that this Honorable Court reverse the decision of the trial court denying the Motions to Suppress, and remand the case for trial subject to the exclusion of evidence related thereto.

Respectfully Submitted,

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