

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

STATE OF DELAWARE,	)	
	)	Case No.: 1110013673
v.	)	
	)	
BENJAMIN JACKSON,	)	
	)	
Defendant.	)	
	)	

STATE OF DELAWARE,	)	
	)	Case No.: 1110013660
v.	)	
	)	
ADOLPH CONOVER,	)	
	)	
Defendant.	)	
	)	

Date Submitted: June 27, 2012
Date Decided: July 19, 2012

Jamie McCloskey, Deputy Attorney General, Office of the Attorney General, 820 N. French Street, 7th floor, Wilmington, DE 19801.
Attorney for the State of Delaware

Jonathan Layton, Esquire, Attorney at Law, 1823 West 16th Street, Wilmington, DE 19806.
Attorney for Defendants

WELCH, J.

MEMORANDUM OPINION DENYING DEFENDANT'S
MOTION TO SUPPRESS

(i) Procedural Posture.

Defendant Benjamin Jackson was charged with Resisting Arrest in violation of 11 *Del. C.* § 1257(b); and Disorderly Conduct in violation of 11 *Del. C.* § 1301(1)(b). Defendant Adolph Conover was charged with Resisting Arrest in violation of 11 *Del. C.* § 1257(b); and Offensive Touching of a Law Enforcement Officer in violation of 11 *Del. C.* § 601(a)(1). On April 1, 2012, Mr. Jackson and Mr. Conover filed a Motion to Suppress evidence obtained during the officer's warrantless entry into their home.

On April 2, 2012, a hearing was held in this Court on Defendants' Motion to Suppress. At the conclusion of the hearing, the court ordered the parties to submit post hearing memoranda addressing whether the entry into the home was lawful. This is the Court's decision after consideration of the record, arguments of the parties, and applicable law as set forth in the trial and briefing schedule ordered by the Court.

(ii) The Facts.

On October 19, 2011, at approximately 10:42 p.m., Officer Robert Steele was dispatched to the 900 block of Marshall Street in Wilmington, Delaware, in reference to a neighborhood dispute. Officer Steele testified that after he arrived at the scene, he observed individuals standing outside their homes, yelling at each other. Officer Steele testified that Mr. Jackson exited his home and began yelling at both the individuals standing outside as well as and the police officers. Officer Steele testified that he instructed Mr. Jackson to go inside his home or stop yelling. Rather than follow this lawful instruction, Mr. Jackson briefly stepped into his home, and then returned outside and began yelling. Officer Steele testified that he again instructed Mr. Jackson to go inside the house or stop yelling. Mr. Jackson similarly ignored this

lawful instruction by a Wilmington Police officer. At this point, Officer Steele advised Mr. Jackson that he was finally under arrest. Officer Steele testified on cross examination that when he advised Mr. Jackson he was under arrest, Mr. Jackson was outside of the home.

Officer Steele testified that as he approached the home to place Mr. Jackson in custody, Mr. Jackson promptly fled into his home. During this time, Mr. Conover stood behind Mr. Jackson and pulled Mr. Jackson into the home.

(iii) The Law.

The burden of proof to support a motion to suppress is by a preponderance of the evidence.¹ Under Delaware statutory law, a police officer may make a warrantless arrest when the officer reasonably believes that the person to be arrested committed a misdemeanor in the officer's presence. 11 *Del. C.* § 1904(a)(1) provides:

“An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has *reasonable ground to believe* that the person to be arrested has committed a misdemeanor in the officer's presence.”

Reasonable ground to believe is the equivalent of probable cause and is accorded the same meaning.² Police officers have probable cause to make warrantless arrests when “at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that [the defendant] had committed or was committing an offense.”³

¹ *State v. Seward*, 2007 WL 1784188, *4 (Del. Super. Apr. 11, 2007).

² *Negron v. State*, 979 A.2d 1111 (Del. 2009) (TABLE).

³ *Id.* (citing *Coley v. State*, 886 A.2d 1277 (Del. 2005) (TABLE)).

(iv) Discussion.

The State contends that Mr. Jackson committed disorderly conduct in Officer Steele's presence in violation of Delaware statute 11 *Del. C.* § 1301(1)(b). 11 *Del. C.* § 1301(1)(b) provides that a person is guilty of disorderly conduct "when making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present."⁴

The Court finds that Officer Steele had probable cause to believe Mr. Jackson committed the offense of disorderly outside his home. Officer Steele observed Mr. Jackson yelling at individuals who were standing outside and officers who arrived on scene. Officer Steele testified that he verbally warned Mr. Jackson to stop yelling because it was causing other individuals in the neighborhood to yell back. Mr. Jackson refused to follow Officer Steele's instruction because he entered his home, and then exited again and continued to yell at others. Officer Steele testified that Mr. Jackson was standing outside of the home when he advised Mr. Jackson that he was under arrest.

The parties agree that Officer Steele did not have a warrant to enter Mr. Jackson's and Mr. Conover's home; however, a warrant was not required in this case because Officer Steele observed Mr. Jackson commit disorderly conduct while he was standing on the front step outside his home.⁵ Therefore, the warrantless entry into Mr. Jackson's and Mr. Conover's home was lawful as it was continue a valid arrest that was already in progress.

Defendant argues that notwithstanding the fact that he was lawfully under arrest outside his home; Officer Steele required a warrant to follow Mr. Jackson inside his home. The court rejects this argument for the following reasons. The act of retreating into a private home cannot

⁴ 11 *Del. C.* § 1301(1)(b).

⁵ *United States v. Santana*, 427 U.S. 38 (U.S. 1976).

thwart an otherwise lawful arrest that occurred outside the home.⁶ Further, a person is not allowed to resist arrest, even if the arrest is later determined to be unlawful.⁷

(v) **Order.**

THEREFORE, the Defendants' Motion to Suppress is hereby **DENIED**.

This matter shall be set for a jury trial with notice to counsel of record at the earliest convenience of the Court.

IT IS SO ORDERED this 19th day of July, 2012.

John K. Welch
Judge

/dd

cc: Ms. Juanette West, CCP, Criminal Case Manager

⁶ *Id.* at 42.

⁷ *State v. Fax*, 2005 WL 419366, at *5 (Del. Com. Pl. Feb. 23, 2005) (citing *Ellison v. State*, 410 A.2d 519, 523 (Del. Super. 1979), *aff'd*, 437 A.2d 1127 (Del. 1981), *cert. denied*, 455 U.S. 1026 (1982)).