

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES REED,	§	
	§	No. 391, 2013
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1302010121
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 19, 2014

Decided: April 14, 2014

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 14th day of April, on consideration of the briefs and arguments of the parties, it appears to the Court that:

1) James Reed appeals from his conviction, following a bench trial, of possession of a controlled substance. He argues that the trial court erred in denying his motion to suppress drugs that the police found during a pat-down search. Specifically, Reed contends that: i) the pat down exceeded the permissible bounds of the traffic stop; and ii) the trial court's finding that the drugs would have been discovered during a valid search pursuant to arrest was clearly erroneous. We agree

that the record facts do not support application of the “inevitable discovery” rule. Accordingly, we reverse.

2) In February 2013, at about 7:00 p.m., Wilmington Police Officers James Houck and John Fleming responded to an anonymous report of a suspicious vehicle. When the police arrived at the specified location, they saw a car idling in an alleyway. Fleming approached the driver’s side of the vehicle and Houck approached the passenger side. They saw Reed in the driver’s seat, slumped over and apparently sleeping or passed out. Fleming knocked on the car window and Reed opened his eyes. Fleming asked Reed for identification, car registration and proof of insurance. Reed could not find any of those documents.

3) Fleming then removed the ignition key and asked Reed to get out of the car. Fleming began patting Reed down, and, during the pat-down, asked Reed whether he had any weapons, drugs or needles. Reed said he did not know. Fleming discovered Reed’s wallet, with his license, in his pants pocket. Fleming also discovered ten bags of heroin and a hypodermic needle. Reed was arrested and charged with possession of a controlled substance, possession of drug paraphernalia, driving while license suspended or revoked, and no proof of insurance.

4) Reed moved to suppress the evidence discovered during the pat-down. The trial court denied the motion, holding:

So, I will deny the Motion to Suppress on that ground [that Reed had committed arrestable motor vehicle offenses] and inevitability of discovery but not on community caretaker or that [the police] had officer safety issues and were entitled to do the pat down.¹

The trial court found Reed guilty of possession of a controlled substance and acquitted him on all other charges. He was sentenced to one year at Level V. This appeal followed.

5) Reed begins by arguing that the pat-down search was improper because it exceeded the scope of the traffic stop. It is difficult to understand the basis for this argument, as the trial court agreed that the pat-down was unlawful. The trial court stated that, “I don’t think the pat down was done pursuant to officer safety,”² and “this isn’t community caretaking.”³ In concluding, the trial court reiterated, “[b]ut it is not that I found that this was an appropriate pat down The only way this gets in is through inevitability of discovery, and that comes from the point that [the police] would have had the ability to arrest [for traffic violations.]”⁴

6) The only real issue, therefore, is whether the trial court’s inevitable discovery ruling was clearly erroneous. The State concedes that the facts do not

¹ Appellant’s Appendix, A-64.

² Appellant’s Appendix, A-62.

³ *Id.* at 61.

⁴ *Id.* at A-64.

support the trial court's decision. Houck testified that the standard procedure in dealing with a driver whose license is suspended is to issue a summons and, either let the driver leave, or park the car and have someone come to pick up the unlicensed driver. He specifically stated that the standard practice is not to arrest the driver. The trial court based its inevitable discovery ruling on the premise that Reed was going to be arrested, and that the drugs would have been discovered during a valid search incident to that arrest. We agree with the State's concession that the trial court's decision was clearly erroneous.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, REVERSED.

BY THE COURT:

/s/ Carolyn Berger
Justice