IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES REED,	)	
	)	
Defendant Below,	)	
Appellant.	)	
	)	
v.	)	No. 391, 2013
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE'S ANSWERING BRIEF

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November 18, 2013

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

CONSTITUTIONS

NATURE AND STAGE OF THE PROCEEDINGS

Appellant James Reed was arrested on February 14, 2013, and indicted on March 18, 2013, on charges of possession of heroin (16 *Del. C.* § 4763(c)), possession of drug paraphernalia (16 *Del. C.* § 4771(a)), driving while license is suspended or revoked (21 *Del. C.* § 2756(a)), and driving without proof of insurance (21 *Del. C.* § 2118(p)). (D.I. 1-2, A4-5). Reed, represented by counsel, filed a motion to suppress on May 28, 2013. (D.I. 8, A6-17). The State responded on June 19, 2013. (D.I. 11, A19-41). Superior Court held a hearing and denied Reed's motion on June 21, 2013. (D.I. 13, A43-64).

Superior Court held a stipulated non-jury trial on June 27, 2013, and found Reed guilty of possession of heroin, acquitting him of the remaining charges. (D.I. 14-15, A66-72). Superior Court sentenced Reed to one year at Level V, suspended for one year at Level II. (D.I. 15, Appellant Ex. B). Reed appealed Superior Court's denial of his suppression motion. This is the State's answering brief.

SUMMARY OF THE ARGUMENT

I. Arguments I and II of Appellant's Opening Brief are DENIED. The officers had probable cause to arrest, justifying a search. The fact that the officers had discretion to issue a citation rather than arrest does not render the search improper. Because Superior Court's ruling may properly be affirmed based on a rationale other than the inevitable discovery doctrine, the Court need not reach Reed's claim regarding that doctrine.

STATEMENT OF FACTS

On the evening of February 14, 2013, two Wilmington Police officers responded to a 911 call reporting a suspicious vehicle, a Kia Soul, in the rear alleyway of the 400 block of South Dupont Street. (A47). The officers pulled up behind an idling Kia Soul that was blocking the alleyway. (A47-48). The officers approached the car, one officer approaching the driver's side and the other officer approaching the passenger side. (A48). The officer on the driver's side knocked on the window twice, but the driver (Reed), who appeared to be passed out, head forward with his eyes closed, did not respond. (A48-49, A50, A54). After the third knock, Reed awoke and drove the car forward. (A49). The officers told him to stop, turn off the vehicle, and hand over the keys, which Reed did. (A49).

An officer asked Reed for his driver's license, registration, and insurance. (A49). Reed was disoriented, fumbling, and moving slowly, could not recall what the officer was saying or asking for, and could not provide the requested documents. (A49). The officers asked Reed to step out of the car; he did so very slowly. (A49-50). One officer asked Reed if he had any weapons, drugs, or needles on his person. (A50). Reed responded that he did not know. (A50). The other officer patted Reed down and found bags of heroin and a needle, as well as Reed's wallet containing his identification. (A50, A54). The officers arrested Reed and put him in the back of the patrol vehicle. (A50). Reed stated he had just

finished using heroin with a friend in the area, and an officer testified that in his experience, Reed's behavior was similar to that of a person who had passed out from using heroin. (A50). Reed's license was suspended, and the officers could not find any registration information or proof of insurance. (A50, 54).

I. REED'S PATDOWN WAS PROPER BECAUSE THE OFFICERS HAD PROBABLE CAUSE TO ARREST REED.

Question Presented

Whether Superior Court abused its discretion in finding the patdown of Reed was proper, where the officers had probable cause to arrest.

Standard and Scope of Review

This Court reviews the denial of a motion to suppress for an abuse of discretion.[1] To the extent that the trial judge's legal conclusions are at issue, the standard of appellate review is *de novo* for errors in formulating or applying legal concepts.[2] The Court reviews factual findings to determine whether the trial court abused its discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.[3]

Merits

On appeal, Reed does not challenge the stop, handing over his keys, being asked for identification, or being asked to step out of the car, and Reed concedes the officers had probable cause to believe he had committed a traffic offense. (Op. Br. at 5). Reed's claim is limited to his assertion that the patdown violated his

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[1] *Lopez–Vazquez v. State*, 956 A.2d 1280, 1284–85 (Del. 2008).

[2] *Id.*

[3] *Id.*

rights under the Fourth Amendment of the United States Constitution.[4] (Op. Br. at 6). Reed asserts 1) the patdown improperly exceeded the scope of the stop under *Caldwell v. State*,[5] and 2) the patdown was improper because police procedure for Reed's traffic violations is to issue a summons, not to arrest.[6] (Op. Br. at 5-8; A55).

The incident began with a report of a "suspicious vehicle." When the officers first encountered Reed in the "suspicious vehicle," he was passed out in an idling car with the engine on, blocking an alleyway. After they woke him, he tried to drive away. He was fumbling, slow moving, and incoherent. He was unable to respond to the officers' request for identification (which was in his wallet on his person at the time). Reed seemed unable to drive or to stay awake, and could not provide any identification, registration, or proof of insurance.

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[4] Reed also mentions Article 1, Section 6 of the Delaware Constitution, but he does not offer any explanation of this argument; he merely asserts that the patdown violated his rights thereunder. Such conclusory assertions that the Delaware Constitution has been violated are considered waived on appeal. *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2005).

[5] 780 A.2d 1037 (Del. 2001).

[6] Reed also claims that because a summons would not have resulted in a patdown, Superior Court erred in relying on the inevitable discovery doctrine to deny Reed's suppression motion. (Op. Br. at 9-12). Because Superior Court's ruling may properly be affirmed based on a rationale other than the inevitable discovery doctrine, the Court need not reach Reed's claim regarding that doctrine. *See Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

As Reed conceded and Superior Court found, the officers had probable cause to arrest Reed for his traffic violations, including blocking the alleyway and driving without a license. (A62-63). The officers' need to identify Reed justified continued detention and investigation.[7] Reed could not provide identification when the officers asked for it, even though it was in his wallet on his person throughout the encounter. Further, because the officers had probable cause to arrest, the officers could search Reed.[8] "Delaware law . . . gives a police officer the discretion to make a custodial arrest for violation of any motor vehicle law."[9]

Reed attempts to avoid the officers' ability to search incident to arrest for Reed's traffic offenses by arguing that because driving with a suspended license is often handled by issuing a summons, rather than a custodial arrest, the patdown was improper. (*See* A55). As a factual matter, the officers did not discover Reed's license was suspended until after discovering his identification in the patdown.

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[7] 11 *Del. C.* § 1902(b); *Bunting v. State*, 2004 WL 2297395, *2 (Del. Oct. 5, 2004) ("Where suspects can neither give identification nor explain their actions 'to the satisfaction of the officer,' the police are justified in detaining them for further investigation.").

[8] *Stafford v. State*, 59 A.3d 1223, 1231 (Del. 2013) ("Because [the officer] possessed probable cause to arrest [the defendant] . . . he could conduct a search incidental to that arrest . . . [I]t does not matter whether the officer could articulate a reasonable suspicion that [defendant] was armed and dangerous or whether the officer thought he was carrying out an 11 *Del. C.* § 1902 detention.").

[9] *Traylor v. State*, 458 A.2d 1170, 1174 (Del. 1983) (citing 21 *Del. C.* §§ 703 (a), (b)); *see also* 21 *Del. C.* § 701(a).

The officers could not have issued Reed a summons for his suspended license without obtaining his identification.

Reed's premise is also contrary to Delaware law. Delaware law gives a police officer the discretion to make a custodial arrest, or to issue a summons, for violation of any motor vehicle law.[10] Reed provides no basis for distinguishing offenses that may be handled by a summons or arrest from offenses that are traditionally handled by a custodial arrest. "Even if the offense is nonthreatening, an officer may conduct a search incident to an arrest."[11] The United States Supreme Court explicitly refrained from distinguishing minor offenses for purposes of searches incident to arrest:

> Nor are we inclined . . . to qualify the breadth of the general authority to search incident to a lawful custodial arrest on an assumption that persons arrested for the offense of driving while their licenses have been revoked are less likely to possess dangerous weapons than are those arrested for other crimes. It is scarcely open to doubt that the danger to an officer is far greater in the case of the extended exposure which follows the taking of a suspect into custody and transporting him to the police station than in the case of the relatively fleeting contact resulting from the typical *Terry*-like stop. This is an adequate basis for treating all custodial arrests alike for purposes of search justification.[12]

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[10] *Traylor*, 458 A.2d at 1174; 21 *Del. C.* §§ 703 (a), (b).

[11] *Stafford*, 59 A.3d at 1231 (citing *United States v. Robinson*, 414 U.S. 218, 234-35 (1973)).

[12] *Robinson*, 414 U.S. at 234-35; *see also id.* at 235 n.5 ("The danger from the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest.").

While the actual issuance of a citation instead of an arrest precludes a search incident to arrest, the fact that an officer *may*, in his discretion, cite or arrest, does not preclude a search based on probable cause to arrest.[13] This Court has upheld several searches incident to arrests for nonviolent offenses, including criminal impersonation,[14] disorderly conduct based on public urination,[15] and driving with a suspended license.[16] The fact that the officers could have issued a summons for Reed's driving with a suspended license, and that officers often do just that, does not preclude a search based on probable cause to arrest in this case, where no citation was actually issued.

In sum, Reed concedes the officers had probable cause to arrest for Reed's traffic offenses. The patdown of Reed was therefore proper. The fact that the officers had discretion to issue a citation rather than arrest does not render the search improper.

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[13] *Knowles v. Iowa*, 525 U.S. 113, 114-18 (1998).

[14] *Stafford*, 59 A.3d at 1231.

[15] *Negron v. State*, 2009 WL 2581714, *4 (Del. Aug. 24, 2009).

[16] *Traylor*, 458 A.2d at 1174.

CONCLUSION

The judgment of the Superior Court should be affirmed.

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November 18, 2013

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CERTIFICATION OF SERVICE

The undersigned certifies that on November 18, 2013, she caused the *State's Answering Brief* to be to be delivered to the following person in the form and manner indicated:

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