IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRELL CURTIS,	)	
	)	No. 639, 2010
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	Cr. ID No. 0912001270
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: March 9, 2011
Decided: March 9, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 9th day of March 2011, it appears to the Court that:

(1) A Superior Court judge convicted Darrell Curtis of possession with intent to deliver heroin and possession of heroin within one thousand feet of a school. Curtis appeals his convictions and contends that the judge erred by finding that Curtis's Motion to Suppress should be denied because the police lawfully seized Curtis before recovering heroin that Curtis threw into plain view. We AFFIRM.

(2) On December 2, 2009, Detectives Jeffrey Silvers and Vincent Jordan of the Wilmington Police Department received information from a confidential source that a tall, thin, dark skinned, black male wearing dark sunglasses would

possess a large quantity of heroin at a specific city block in Wilmington. The detectives began to conduct surveillance on that city block in an unmarked car. Silvers observed a man—later identified as Curtis—who matched the relevant description walking down the sidewalk of the specified block. Jordan pulled the police car forward and stopped behind a parked van which had dark tinted rear windows. Jordan remained in the car while Silvers got out and watched through the tinted rear windows of the van as Curtis approached. As Curtis approached the passenger door of the parked van, Silvers stepped out from behind the van. Silvers did not say anything to Curtis, but he was wearing a black vest with "police" written in big white letters on the front and back and had his hand on a Taser located inside the vest.

(3) At the suppression hearing, Silvers recalled what happened next in the following terms:

> I looked at Mr. Curtis who looked back at me. I believe we made eye contact, but he had very dark sunglasses on so I can't tell if he was specifically looking at me. He looked in my direction.
>
> At this point, he threw two items from his right hand onto the grass in the front lawn behind where he was walking. At that point, I drew my Taser, pointed it at Mr. Curtis, ordered him on the ground, which he did, and I took him into custody. I recovered the items that he threw.[1]

The items Curtis threw were bags of heroin. As to the critical moment during which Curtis threw the bags onto the adjacent lawn, Silvers testified that:

[1] Suppress. Hr'g Tr. 9:19–10:5.

> He was walking up the street, and I think I kind of surprised him when I stepped out from behind [the van] and he saw me. So I think I kind of surprised him. And within a fraction of a second is when he dropped the items to the ground when I approached him.[2]

(4) A Grand Jury indicted Curtis for trafficking in heroin, possession with intent to deliver heroin, and possession of heroin within one thousand feet of a school. Curtis moved to suppress the heroin bags that Silvers seized. The judge denied that motion from the bench, explaining in relevant part:

> [T]he finding here is that defendant abandoned the contraband at the moment of the interaction between the police and defendant and before the police actually attempted to stop defendant. The way the Court sees it, basically the defendant in effect said to himself: Police, uh-oh. And he dropped the contraband. That's what happened here.[3]

The parties then proceeded to a stipulated trial. The State dropped the trafficking in heroin charge. The judge found Curtis guilty of possession with intent to deliver heroin and possession of heroin within one thousand feet of a school and he sentenced Curtis accordingly. Curtis now appeals his convictions and argues that the police wrongfully seized him and that the judge should, therefore, have granted his Motion to Suppress.

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[2] *Id.* at 12:7–12.

[3] *Id.* at 31:12–18.

(5) We review the denial of a motion to suppress for abuse of discretion.[4] To the extent the Superior Court judge's decision is based on factual findings, we review to determine whether the judge abused his discretion by determining there was sufficient evidence to support the findings and whether those findings were clearly erroneous.[5] To the extent that we examine the Superior Court's legal conclusions, we review them *de novo* for errors in formulating or applying legal precepts.[6]

(6) The Delaware Constitution provides broader guarantees with respect to searches and seizures than the United States Constitution provides.[7] To determine when a seizure has occurred under article I, section 6 of the Delaware Constitution, we "focus[] upon the police officer's actions to determine when a reasonable person would have believed he or she was not free to ignore the police

[4] *Williams v. State*, 962 A.2d 210, 214 (Del. 2008) (citing *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008)).

[5] *Id.*

[6] *Id.*

[7] *See Jones v. State*, 745 A.2d 856, 866 (Del. 1999) ("We reach the same conclusion with regard to the search and seizure provision in the Delaware Constitution[—that it provides different and broader protections than those guaranteed by the Fourth Amendment to the United States Constitution—]based upon its historical convergence for more than two hundred years with the same provision in the Pennsylvania Constitution.").

presence."[8] We have given meaning to this legal test by applying it to various fact scenarios posed by numerous cases.

(7) For example, in *Woody v. State*, Woody was standing in the backyard of a residence when one police officer got out of an unmarked car and approached the backyard.[9] Woody turned and walked toward the front of the residence, but then ran back toward the rear door after seeing three other uniformed officers entering the yard from the front side.[10] In that case, this Court concluded that the police only seized Woody when they ordered him to stop, but not when they engaged in the "entirely permissible act" of approaching him.[11] Later, in *Ross v. State*, a majority of this Court held that "the presence of uniformed police officers following a walking pedestrian and requesting to speak with him, without doing anything more, does not constitute a seizure under [a]rticle I, [section] 6 of the Delaware Constitution."[12]

(8) In this case, Silvers testified that once Curtis looked in Silvers' direction, Curtis dropped the drugs "within a fraction of a second." Silvers did not even have the chance to ask to speak to Curtis before Curtis dropped the drugs. In

[8] *Id.* at 869.

[9] *Woody v. State*, 765 A.2d 1257, 1260 (Del. 2001).

[10] *Id.*

[11] *Id.* at 1264 (citing *Florida v. Royer*, 460 U.S. 491, 498 (1983)).

[12] *Ross v. State*, 925 A.2d 489, 494 (Del. 2007) (citing *Jones*, 745 A.2d at 859).

that respect, this case is more straightforward than *Ross*. If Silvers, in his police vest with his hand on his Taser, had continued to walk towards Curtis and had restricted Curtis's movement or had ordered Curtis to stop, a reasonable person in Curtis's position arguably would have believed he was not free to ignore the police presence. Those, however, are not the facts of this case. In this case, the mere presence of Silvers for a fraction of a second—or even a few seconds—would not cause a reasonable person in Curtis's position to believe he could not ignore the police presence.[13] This conclusion is consistent with our holding in *Woody*.

(9) Because Curtis dropped the drugs almost immediately, as in *Woody*, there was no "encounter" between Curtis and the police.[14] Consequently, Silvers did not unlawfully seize Curtis in violation of the Delaware or United States Constitutions. Accordingly, the Superior Court judge did not err when he denied Curtis's Motion to Suppress.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

[13] *See Jones*, 745 A.2d at 869.

[14] *See Woody*, 765 A.2d at 1264 n.4.