

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAUWAUN SMITH,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 335, 2015**
)
 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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DATE: October 19, 2015

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NATURE AND STAGE OF THE PROCEEDINGS

On September 15, 2014, the New Castle County Grand Jury returned a three-count indictment against Jauwaun Smith (“Smith”) alleging Possession of Firearm by a Person Prohibited (“PFBPP”), Possession of Ammunition by a Person Prohibited (“PABPP”) and Carrying a Concealed Deadly Weapon (“CCDW”).

A1. On December 1, 2014, Smith filed a Motion to Suppress in the Superior Court. A2. After a hearing on January 9, 2015, the court denied Smith’s motion. A2. The matter proceeded to trial on March 24, 2015. A jury convicted Smith of PFBPP and PABPP, and hung on the remaining CCDW charge.¹ A3-4. On June 19, 2015, Smith was sentenced to a five-year term of incarceration followed by a period of probation. Exhibit B to *Op. Brf.* Smith appealed his convictions. This is the State’s Answering Brief.

¹ On April 17, 2015, the State entered a *nolle prosequi* on the CCDW charge. A4.

SUMMARY OF THE ARGUMENT

Appellant's argument is denied. The trial court properly found that Smith's detention was authorized by 11 *Del. C.* § 1910. The officer who detained Smith was investigating a curfew violation and a bicycle lamp violation. Section 1910 permits a police officer to detain a witness to a crime and/or a traffic violation.

STATEMENT OF FACTS

At approximately 11:10 p.m. on July 14, 2014, Officer Matthew Schneider (“Schneider”) of the Middletown Police Department was patrolling the Middletown Village neighborhood in a police car when he saw Jauwaun Smith walking with a juvenile who was riding a bicycle without a headlight. A29. Schneider had observed the pair in a different part of the neighborhood earlier that evening. A30. Because the juvenile was out past curfew and was riding a bicycle in the roadway without a headlight, Schneider turned his patrol car around and told the juvenile to stop. A30; Exhibit A-1, A-2 to *Ans. Brf.* Approximately 10-15 seconds prior to Schneider telling the juvenile to stop, he observed Smith separate himself from the juvenile. A30. Schneider’s interaction with the juvenile and Smith was captured on a video camera mounted to the officer’s shoulder. A30; Exhibit A-1, A-2 to *Ans. Brf.* The video shows Schneider detaining the juvenile close to his patrol car while Smith remains standing across the roadway. Exhibit A-1, A-2 to *Ans. Brf.* While detaining the juvenile, Schneider ordered Smith to sit on a street curb next to his patrol car. Exhibit A-1, A-2 to *Ans. Brf.* Smith remained seated on the curb while Schneider secured the juvenile. Exhibit A-1, A-2 to *Ans. Brf.* Schneider approached Smith to speak with him and almost immediately noticed a handgun on the ground next to Smith. Exhibit A-1, A-2 to *Ans. Brf.* At that point, Schneider arrested Smith and took him into custody.

Exhibit A-1, A-2 to *Ans. Brf.* As Schneider transported Smith back to the police station he he told the police dispatcher he had cited the juvenile for a curfew violation and for riding a bicycle at night without a headlight. Exhibits A-1, A-2 and B to *Ans. Brf.*

ARGUMENT

I. THE SUPERIOR COURT PROPERLY DENIED SMITH'S MOTION TO SUPPRESS.

Question Presented

Whether the Superior Court abused its discretion when it denied Smith's Motion to Suppress based upon a finding that his detention was justified under 11 *Del. C.* § 1910.

Standard and Scope of Review

This Court reviews a trial court's denial of a motion to suppress for an abuse of discretion.² This Court examines the trial court's legal conclusions *de novo* for errors in formulating or applying legal precepts.³ The trial court's factual findings are reviewed by this Court to determine "whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous."⁴

Merits of the Argument

Police officers may stop and detain a person for investigatory purposes when they possess a reasonable articulable suspicion that the person has committed or is

² *State v. Holden*, 60 A.3d 1110 (Del. 2013); *Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008).

³ *Jackson v. State*, 990 A.2d 1281 (Del. 2009); *Lopez-Vazquez*, 956 A.2d 1280.

⁴ *Jenkins v. State*, 970 A.2d 154, 157 (Del. 2009) (quoting *Lopez-Vazquez*, 956 A.2d at 1284-85 (*internal quotes omitted*)).

about to commit a crime.⁵ The same holds true for certain witnesses under 11 *Del.*

C. § 1910, which provides:

Whenever a peace officer has reasonable ground to believe that a crime has been committed, the officer may stop any person who the officer has reasonable ground to believe was present thereat and may demand the person's name and address. If the person fails to give identification to the satisfaction of the officer, the officer may take the person forthwith before a magistrate. If the person fails to give identification to the satisfaction of the magistrate, the latter may require the person to furnish bond or may commit the person to jail until the person so gives identification.⁶

Smith claims that his detention was not justified under 11 *Del. C.* § 1910, because “riding a bicycle without a light at night is now a civil traffic offense, not a crime under Delaware law.”⁷ His argument is unavailing.

In denying Smith's suppression motion, the Superior Court found that Schneider's detention fell within the bounds of section 1910, stating, “the officer had reasonable ground to believe that [the juvenile] had committed a crime; that is, riding a bike without a light. And I also find that the officer had reasonable ground to believe that the defendant was present thereat and, therefore, he legally under

⁵ *Jones v. State*, 745 A.2d 856, 861 (Del. 1999); 11 *Del. C.* § 1902.

⁶ 11 *Del. C.* § 1910. See *Harris v. State*, 1993 WL 61667, at *1 (Del. Feb. 3, 1993) (police authority to stop and question those who are reasonably suspected of committing a crime extends to persons who may possess information about a recently committed crime).

⁷ *Op. Brf.* at 6.

1910 could stop the defendant and ask his pedigree.”⁸ The Superior Court’s finding was correct.

Here, the analysis must begin with the detention of the juvenile. Smith’s claim that the police were investigating a civil traffic offense and not a “crime” is only half correct. Schneider was, in fact, investigating a curfew violation in addition to the bicycle light violation.⁹ Section 55-1 of the Code of the Town of Middletown provides:

It shall be unlawful for any minor under the age of 17 years to loiter, idle, wander, stroll or play in or upon the public streets, highways, roads, alleys, parks, public buildings, places of amusement and entertainment, vacant lots or other unsupervised places, between the hours of 10:30 p.m. and 6:00 a.m. of the following day; provided, however, that the provisions of this section do not apply to a minor accompanied by his or her parent, guardian or other adult person having the care and custody of the minor or where the minor is upon an emergency errand or legitimate business directed by his or her parent, guardian or other adult person having the care and custody of the minor.¹⁰

A “crime,” as defined by 11 *Del. C.* § 233, is:

(a) “Crime” or “offense” means an act or omission forbidden by a statute of this State and punishable upon conviction by:

⁸ A39.

⁹ See Exhibit B to *Ans. Brf.* (redacted criminal summons and DELJIS docket sheet for the juvenile’s curfew violation). While the Superior Court did not address the curfew violation, this Court may affirm the Superior Court’s judgment on an alternative ground. *Torrence v. State*, 2010 WL 3036742, at *2 (Del. Aug. 4, 2010) (citing *Unitrin, Inc. v. American Gen’l Corp.*, 651 A.2d 1361, 1390 (Del. 1995)).

¹⁰ Code of the Town of Middletown, § 55-1 (1978).

- (1) Imprisonment; or
- (2) Fine; or
- (3) Removal from office; or
- (4) Disqualification to hold any office of trust, honor or profit under the State; or
- (5) Other penal discipline.

(b) An act or omission is forbidden by a statute of this State if a statute makes the act or omission punishable by any form of punishment mentioned in subsection (a) of this section.

(c) An offense is either a felony, a misdemeanor or a violation. Any offense not specifically designated by law to be a felony or a violation is a misdemeanor.¹¹

Here, the curfew violation falls squarely into the section 233 definition of a “crime” for purposes of 11 *Del. C.* §§ 1902 and 1910. Thus, Schneider’s detention of the juvenile for the curfew violation was authorized by section 1902 and his detention of Smith was authorized by section 1910.

Notwithstanding the above, Smith contends his detention was not authorized by section 1910 because Schneider was investigating a civil traffic offense, which is not a crime. This Court rejected a similar claim in *Rickards v. State*, framing the issue as whether a “police officer [may] stop a driver where the officer has a reasonable and articulable suspicion regarding the commission of a *civil* traffic violation.”¹² In *Rickards*, an off-duty police officer, who was returning home in an unmarked police car, observed Rickards’ car stopped in the roadway blocking the

¹¹ 11 *Del. C.* § 233.

¹² *Rickards v. State*, 2011 WL 153643, at *1 (Del. Jan. 12, 2011) (emphasis in original).

entrance to the officer's private driveway.¹³ When the officer approached, Rickards pulled away.¹⁴ The officer, who had been concerned about excessive dumping and littering on and around his property, suspected that Rickards had been littering.¹⁵ The officer followed Rickards down the road to a stop sign and did not observe Rickards violating any traffic laws.¹⁶ The officer stopped Rickards, asked for his paperwork and, during the encounter, detected an odor of alcohol on Rickards' breath.¹⁷ After failing field sobriety tests, Rickards was arrested and charged with DUI.¹⁸

On appeal, Rickards argued that the officer lacked the authority to conduct a stop for a suspected civil traffic violation.¹⁹ Rejecting that argument, this Court held that the stop was authorized by 21 *Del. C.* § 802, which permits a police officer "to make an administrative stop for purposes of enforcing a civil traffic

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at *2. The officer was investigating a violation of 21 *Del. C.* § 4179, which applies to stopping, standing or parking violations.

statute, upon reasonable and articulable suspicion that a violation of such statute has occurred.”²⁰ Applying its holding to the facts, the *Rickards* Court stated:

At the time [the officer] witnessed Rickards illegally parking on the roadway in front of [the officer’s] private driveway, he had a reasonable and articulable suspicion that a violation of Section 4179 was occurring. [The officer] was, therefore, statutorily authorized to conduct a traffic stop to enforce Rickards’ violation of Section 4179.

As *Rickards* and the plain language of section 802 make clear, the police are statutorily authorized detain a person suspected of committing a civil traffic violation.

Here, Schneider’s detention of the juvenile for a violation of 21 *Del. C.* § 4198F²¹ was authorized by section 802. Moreover, this Court has held that a police officer is authorized to detain a person under 11 *Del. C.* § 1910 during the course of a valid stop for a traffic violation.²² A common sense reading of this Court’s opinions and the plain text of sections 1902, 1910 and 802 leads to the conclusion an officer may detain a witness to a civil traffic violation under section 1910.

²⁰ *Id.* at *3 (quoting 21 *Del. C.* § 802) (internal quotations omitted).

²¹ Section 4198F provides, in part:

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front.

²² *See, e.g., Bailey v. State*, 1991 WL 78461, at *3 (Del. Apr. 15, 1991) (under section 1910, officers were permitted to ascertain the identity of a passenger because he was a witness to the driver’s traffic violation).

Stated differently, section 1910 applies to witnesses to civil traffic violations by operation of section 802 – just as it applies to witnesses to crimes by operation of section 1902. As a result, Smith’s detention, which was supported by reasonable suspicion that he was present during the commission of the juvenile’s civil traffic violation, was authorized by section 1910.

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed.

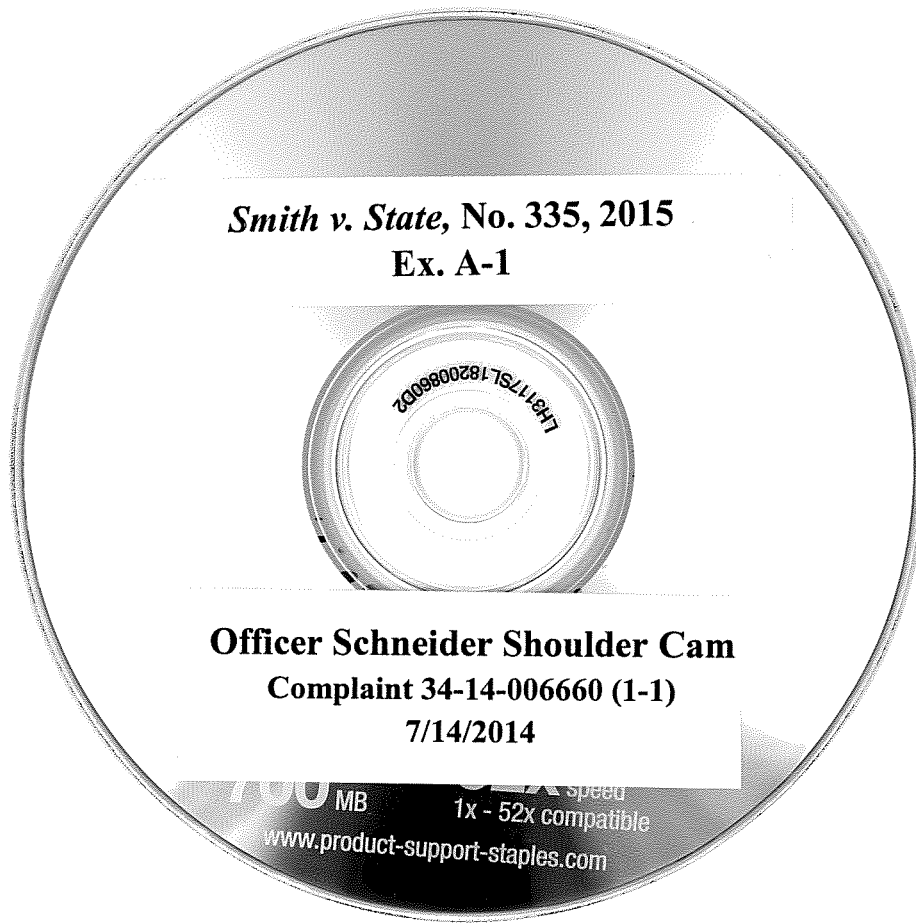
/s/ Andrew J. Vella
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EXHIBIT A-1 to STATE'S ANSWERING BRIEF
(submitted on disk)

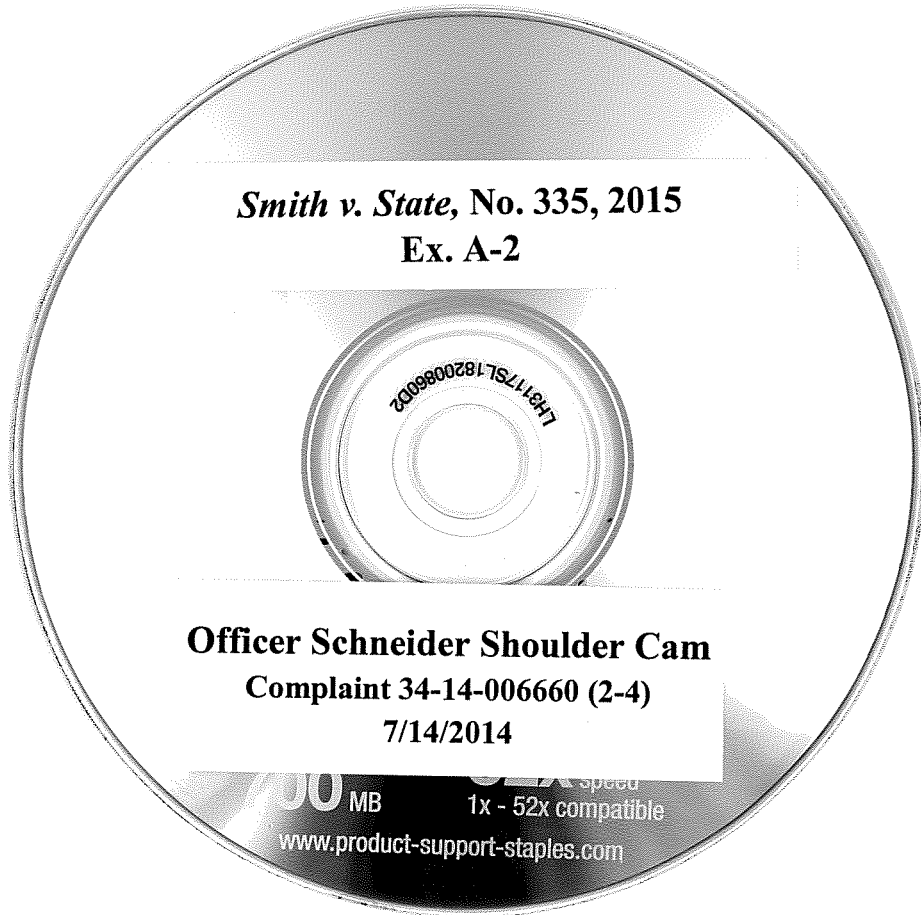


Ex. A-1

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAUWAUN SMITH,)	
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v.)	On Appeal from the
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EXHIBIT A-2 to STATE'S ANSWERING BRIEF
(submitted on disk)



Ex. A-2

STATE OF DELAWARE
UNIFORM CRIMINAL COMPLAINT AND SUMMONS

STATE OF DELAWARE COUNTY OF
CITY OR TOWN OF Middletown

OFFENDER

SBI Number: 00609202

The undersigned police officer has just and reasonable cause to believe that on: 07/14/2014

Name: [REDACTED]
Address: [REDACTED], Middletown, DE 19709
Date of Birth/Age: [REDACTED] 1998 / 17 Sex: Male
Eye Color: Brown Hair Color: Black
Employer: [REDACTED]

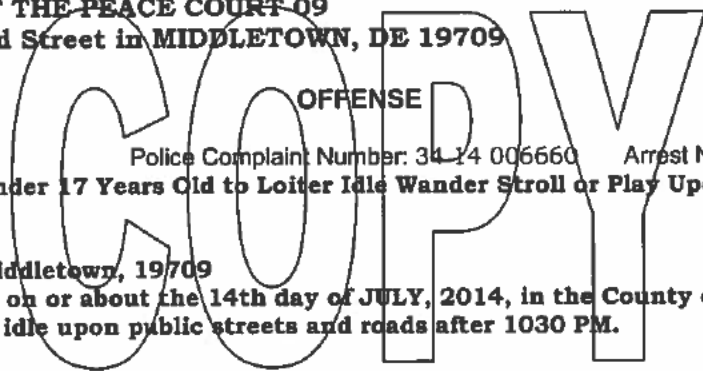
Race: Black/African American

Parent/Guardian
[REDACTED] BLAKE
[REDACTED] STMiddletown, DE 19709

SUMMONS

You are hereby summoned to appear:

DATE/TIME: 1 hour prior to close of business for . Hours of Operation for court: Am to Am
COURT: JUSTICE OF THE PEACE COURT 09
LOCATION: 757 N. Broad Street in MIDDLETOWN, DE 19709



OFFENSE

Charge Sequence: 001 Police Complaint Number: 34 14 006660 Arrest Number: ACS3400938
Charge: Unlawful for Minor Under 17 Years Old to Loiter Idle Wander Stroll or Play Upon Public Streets Highways
Roads In Violation of §
00K1 0001 V
Location: N Ramunno DR - Middletown, 19709
TO WIT: [REDACTED] on or about the 14th day of JULY, 2014, in the County of NEW CASTLE, State of Delaware, to wit: did idle upon public streets and roads after 1030 PM.

AFFIDAVIT

OFC SCHNEIDER - 04029 - MIDDLETOWN POLICE DEPARTMENT

Complaint Number: Arrested _____
(Release by Auth. Official)

sworn before me this 15th day of October AD, 2015.

Judge, Magistrate, Alderman, Commissioner _____

Failure to respond to this summons will result in the issuance of a warrant for your arrest and may result in fine or imprisonment or both.

I promise to appear in said court at said date and time.

Offender _____ Date _____

Parent/Guardian _____ Date _____

Officer OFC SCHNEIDER - 04029 - MIDDLETOWN POLICE DEPARTMENT
of October AD, 2015

Date 15th day

&&Jurisdiction_Header vs. &&Name_of_Defendant

Case: &&Case_Number

Additional Charges

Date 10/15/15 09:55:59 Disposition and Financial Sentence JAGRJLJ CJGI11-P
 Case: 1407012088 Defendant: E [REDACTED] E [REDACTED] Charge Seq: 001
 (Arrest) MI- -00K1-0001-V- Unlawful for Minor Under 17 Years Old to Loiter Id
 (PCI)
 (Court) MI- -00K1-0001-V- UNLAWFUL FOR MINOR UNDER 17 YEARS TO SBI: 00609202
 Court: J9 JUSTICE OF THE PEACE COURT 09
 Court Charge ID: 1407012088001 Disp Code: GLTY - GUILTY
 Disp Date: 08/13/2014 Plea: G GUILTY Judge GRAVELL KATHY S
 Sentence Date: 08/13/2014 Sent Judge GRAVELL KATHY S
 Action Agency: J9 JUSTICE OF THE PEACE COURT 09 Final Status: G
 Transfer Requested: Disp Reason:
 Fine Amount: 5.00 - Suspended:
 Court Costs: 35.00 - Suspended: Mandatory Financial Sent
 Victims Comp: 10.00 Victim Right Fine Due Date:
 Drug Fund: Videophone: Public Defender Fee:
 Drug Diversion - Suspended: Pay fine during first
 Restitution: payable to the yrs mos days
 Alcohol Surcharge: DeljjsFund: 1.00 Court Sec Fund: 10.00
 Transpfund: - Suspended: DNREC Fee:
 Police Fund: 15.00
 Total: 76.00 Nat: 76.00 Work Referral Eligible: No
 Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
 Help Menu Quit Inqy FinCo User -- -- Escp -- SntOr --

CERTIFICATION OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on this 19th day of October, 2015, he caused one copy of the attached *State's Answering Brief* to be delivered via Lexis/Nexis File and Serve and one copy via hand delivery to the following person:

Bernard J. O'Donnell, Esq.
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Carvel State Office Building
820 N. French St., 3d Floor
Wilmington, DE 19801

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella
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