



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
Plaintiff – Below,)
Appellant,)
)
v.) **No. 140, 2016**
)
DIMAERE BRADY,)
)
Defendant – Below,)
Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S REPLY BRIEF

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DATE: July 11, 2016

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
ARGUMENT	1
I. THE SUPERIOR COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER THE TOTALITY OF THE CIRCUMSTANCES KNOWN TO OFFICERS AT THE TIME OF BRADY’S SEPTEMBER 24, 2015 ARREST.....	1
CONCLUSION	6

TABLE OF CITATIONS

Cases

Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008)5

Murray v. State, 45 A.3d 670 (Del. 2012)1, 2

Terry v. Ohio, 392 U.S. 1 (1968)5

United States v. Baker, 221 F.3d 438 (3rd Cir. 2000) 1, 2, 3

United States v. Rivera, 727 F.Supp.2d 367 (E. D. Pa. 2010)1, 3

West v. State, --A.3d--, 2016 WL 3634288 (Del. July 6, 2016)5

ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION BY FAILING TO CONSIDER THE TOTALITY OF THE CIRCUMSTANCES KNOWN TO OFFICERS AT THE TIME OF BRADY’S SEPTEMBER 24, 2015 ARREST.

In his Answering Brief, Brady contends that the facts underlying his September 3, 2015 arrest “fail[] to inform the analysis regarding whether evidence of criminal activity would be found inside of an arbitrary car that police had never before seen prior to canvassing the neighborhood.”¹ Brady contends that “[t]he Hyundai is not related to the first arrest.”² The record, however, demonstrates that the September 3, 2015 arrest informed the officers’ actions and decisions during the September 24, 2015 arrest of Brady and search of the Hyundai.

Brady principally relies on three cases in support of his argument that the officers in this case lacked reasonable suspicion to search the Hyundai: *Murray v. State*,³ *United States v. Rivera*⁴ and *United States v. Baker*.⁵ These cases are factually distinguishable and, in the instance of the federal cases, not controlling. In *Murray*, officers conducted a traffic stop of a car in which Murray, an active

¹ *Ans. Brf.* at 26.

² *Ans. Brf.* at 26.

³ 45 A.3d 670 (Del. 2012).

⁴ 727 F. Supp. 367 (E. D. Pa. 2010).

⁵ 221 F.3d 438 (3rd Cir. 2000).

probationer, was a passenger.⁶ During the stop, officers noticed a bag in front of Murray and asked whether it was his.⁷ The driver of the car said it was her bag and gave the officers consent to search it.⁸ Prior to the search, Murray admitted that the bag was his and told the officers that there were drugs in the bag.⁹ The Court held that the officers impermissibly prolonged the traffic stop by investigating the bag without possessing reasonable articulable suspicion to do so.¹⁰

In *Baker*, the officers stopped Baker after observing him drive away from the probation office – Baker did not have a license and violated the terms of his probation by driving.¹¹ The officers searched the car solely based on Baker’s prohibited driving and discovered drug paraphernalia in the trunk.¹² Based on the evidence found in the trunk, the officers subsequently conducted a warrantless search of Baker’s home and discovered several weapons and a large amount of heroin.¹³ The Third Circuit held that “[t]he parole officers’ actions were not based

⁶ 45 A.3d at 672.

⁷ *Id.* at 673.

⁸ *Id.* at 679 (Ridgely, J. dissenting).

⁹ *Id.*

¹⁰ *Id.* at 677.

¹¹ 221 F.3d at 440.

¹² *Id.* at 441.

¹³ *Id.*

on ‘specific facts’ giving rise to suspicion that there would be some evidence of a further violation of parole in the trunk.”¹⁴ Thus, “[t]he fruit of the search, including the evidence found in the search of Baker’s home,” should have been suppressed.¹⁵

In *Rivera*, the probation officer supervising Rivera had not given him permission to drive a vehicle but found a set of car keys when she searched his pockets after detaining him for a probation violation.¹⁶ The probation officer found the car outside of the probation office and searched the trunk, finding a gun and ammunition.¹⁷ The probation officer testified that she searched the car “to find, you know, possible violation, technical violations.”¹⁸ Relying on *Baker*, the United States District Court for the Eastern District of Pennsylvania held that the probation officer’s search of the vehicle was not supported by reasonable suspicion.¹⁹

Here, officers stopped Brady because he was violating the terms of his probation (curfew) in their presence. This was neither a traffic stop nor was it an office visit. *Baker* and *Rivera* are factually similar to this case insofar as Brady

¹⁴ *Id.* at 444.

¹⁵ *Id.* at 449.

¹⁶ 727 F. Supp. 2d. at 369.

¹⁷ *Id.*

¹⁸ *Id.* at 370.

¹⁹ *Id.* at 375.

was an active probationer, possessed the key to a car and was prohibited from driving. Unlike *Baker* and *Rivera*, the officers in Brady's case provided reasons for searching the Hyundai. Chief among these reasons was the prior encounter officers had with Brady on September 3, 2015. During that encounter, Brady was driving his girlfriend's car despite being prohibited from doing so. Brady resisted arrest, possessed 39 bags of heroin, \$903.00 in cash and admitted that he sold drugs to support his own drug habit.²⁰ When the officers encountered Brady on September 24, 2015, he was violating the terms of his probation, resisted arrest, had the key to his girlfriend's car, and possessed \$781.00 in cash.²¹

Brady suggests that the Superior Court correctly ignored the facts underlying September 3, 2015 arrest. Those facts, however, inform the reasonable articulable suspicion analysis. And, while Brady argues that the Superior Court considered the prior arrest in making its determination, the order granting his Suppression motion is devoid of any analysis of the facts of the prior arrest or how those facts shaped the officers' decisions during the September 24, 2015 arrest and subsequent search of the Hyundai. "[A] determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances to assess whether the detaining officer had a particularized and objective basis to suspect criminal

²⁰ A-28; A-34; A-38.

²¹ A-26-27; A-33.

activity. The totality of the circumstances must be viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with the officer's subjective interpretation of those facts."²² "As a court reviews the reasonableness of the officer's suspicion of criminal activity, 'it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search warrant a [person] of reasonable caution in the belief that the action taken was appropriate?'"²³ And, a commonsense approach should be used when evaluating reasonable suspicion under the totality of the circumstances.²⁴

Here, the Superior Court failed to consider the officers' subjective interpretation of the objective facts surrounding the September 24, 2015 arrest and search. In other words, the facts underlying the officers' prior arrest of Brady, which would have informed their decision to search the Hyundai on September 24, 2015, were excluded from the Superior Court's analysis of the totality of the circumstances. The Superior Court's failure to engage in a complete review of the totality of the circumstances known to the officers was an abuse of discretion.

²² *Lopez-Vazquez v. State*, 956 A.2d 1280, 1288 (Del. 2008) (collecting cases).

²³ *West v. State*, --A.3d--, 2016 WL 3634288, at *3 (Del. July 6, 2016) (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (other citations and internal quotation marks omitted)).

²⁴ *Id.* at *4.

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be vacated and the matter be remanded for trial.

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CERTIFICATION OF SERVICE

The undersigned certifies that on July 11, 2016, he caused the attached *State's Reply Brief* to be delivered electronically via Lexis/Nexis File and Serve to the following person:

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