



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLANT'S OPENING BRIEF

**ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW
CASTLE COUNTY**

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NATURE AND STAGE OF THE PROCEEDINGS

James Reed (“Reed”) was indicted on charges of possession of a controlled substance, possession of drug paraphernalia, driving while license suspended or revoked and no proof of insurance. A-4-5. Reed filed a motion to suppress on May 29, 2013 and the State filed an answer on June 18, 2013. A suppression hearing was conducted on June 21, 2013 and the trial judge denied the motion from the bench. A-64. (See oral ruling, attached as Exhibit A).

Reed waived his right to a trial by jury and a bench trial was held on June 27, 2013. Reed was acquitted on all counts except for possession of a controlled substance. A-72. He was sentenced to one year at Level 5. (*See* Sentence Order, attached as Ex. B).

Reed filed a timely notice of appeal. This is his opening brief in support of that appeal.

SUMMARY OF THE ARGUMENT

1. James Reed's right to be protected from unreasonable search and seizure was violated when police engaged in an independent investigative detention which included a pat-down search that exceeded constitutional limits. Reed was stopped and detained for various motor vehicle violations. But, rather than following standard operating procedure and issuing a summons, police frisked and arrested Reed. Because these actions exceeded the proper scope of the traffic stop, this Court should reverse the Superior Court and hold that the evidence was obtained in violation of Reed's Fourth Amendment rights and Article I, § 6 of the Delaware Constitution.

2. Despite correctly finding that the officers' pat-down search of Reed was improper, the Superior Court misapplied the inevitable discovery doctrine. Based on the standard prevailing operating procedures by the Wilmington Police Department, it was neither inevitable nor reasonably probable that Reed would have been subjected to a pat-down search in violation of the Fourth Amendment of the United States Constitution and Article I, section six of the Delaware Constitution. Thus, reversal is required.

STATEMENT OF FACTS

On February 14, 2013, Wilmington Police Officers James Houck (“Houck”) and John Fleming (“Fleming”) were on routine patrol in the city of Wilmington. A-47. At approximately 7:00 p.m. the officers were dispatched to the 400 block of South DuPont Street in response to an anonymous call concerning a “suspicious” vehicle seen idling in the rear alley way of the block. A-47. Nothing in the record indicates that this was a high crime area.

Upon arriving at the scene, the officers observed the reported vehicle occupied by Reed. Fleming approached the driver’s side and Houck approached the passenger side. A-48. Fleming knocked on the window in order to get Reed’s attention, who appeared to be fatigued. After Reed became alert, the vehicle started to move forward. A-49. Fleming immediately ordered Reed to stop the vehicle and hand him the car keys. Reed fully complied. A-49. Reed was asked to produce his driver’s license, registration and proof of insurance. When Reed was unable to produce identification, he was ordered out of the vehicle and subjected to a pat-down search. Only after the pat-down had commenced was Reed asked if he had any weapons, drugs, or needles on his person. A-50. During the pat-down search, police recovered heroin and a hypodermic needle. A-50. Reed was taken into custody. A-54.

After the pat-down search, police located Reed's wallet and ran his information through DELJIS. Police discovered that Reed had a suspended license. A-50. Wilmington Police standard operating procedure during a stop of a driver with a suspended license and other traffic offenses is to issue a summons. The driver is either permitted to drive off, or park the vehicle and have someone with a valid license retrieve it. A-54. Reed was never issued a summons for the alleged parking violation.¹

¹ 21 *Del. C.* § 4179.

I. POLICE VIOLATED REED’S RIGHTS UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 6 OF THE DELAWARE CONSTITUTION WHEN THEY ENGAGED IN AN INVESTIGATIVE DETENTION THAT EXCEEDED THE PERMISSIBLE BOUNDS OF THE TRAFFIC STOP.

Question Presented

Whether a citizen who commits a motor vehicle violation may be seized and searched for reasons unrelated to the initial violation? The question was preserved by a Motion to Suppress. A-6.

Standard and Scope of Review

When reviewing a denial of a motion to suppress evidence, this Court reviews the trial court’s legal conclusions *de novo*. When reviewing the trial court’s factual findings, this Court determines whether the trial court abused its discretion in deciding whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.²

Argument

Police used a traffic stop as a “device to circumvent constitutional search and seizure requirements.”³ When police seized Reed, they had probable cause to believe that he had committed a traffic offense. However, rather than issuing a summons, police engaged in a full-blown search of his person by ordering him out of his vehicle

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

³ *Caldwell v. State*, 780 A.2d 1037, 1048 (Del. 2001).

and frisking him. Since there was no independent factual basis for the police action, the subsequent investigative detention violated the Fourth Amendment of the United States Constitution and Article I, section six of the Delaware Constitution.⁴ Thus, all evidence obtained therefrom should have been suppressed.

In *Caldwell v. State*, this Court demonstrated its distaste for an officer's use of unfettered discretion to arrest individuals on motor vehicle violations in order to bypass constitutional search and seizure requirements.⁵ Allowing the police to use a Title 21 traffic violation to search for evidence to support an officer's hunch about other criminal offenses is equivalent to granting the police a general warrant to search and seize virtually all travelers on the roads of this State.⁶ Such power is inconsistent with the Delaware Constitution's rejection of the use of the general warrant and puts thousands of vehicle occupants at risk of arbitrary control by the police, substantially impacting their personal liberty and privacy.

⁴ The Delaware Constitution offers broader protections to its citizens than those guaranteed by the Fourth Amendment of the United States Constitution. *See Jones v. State*, 745 A.2d 856, 865-66 (Del. 1999).

⁵ *Caldwell*, 780 A.2d at 1048.

⁶ Delaware's 1776 Declaration of Rights contains Delaware's early search and seizure protection for its citizens. These protections were codified in Section 17 of that document, which stated: "That all warrants without oath to search suspected places or to seize any person or his property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend all persons suspected, without naming or describing the place or any person in special, are illegal and ought not to be granted." *See* Holland, Randy J., *The Delaware State Constitution: A Reference Guide* 36 (Greenwood Press 2002).

“The duration and execution of [Reed’s] traffic stop, like any investigative stop, must be reasonably related to the initial purpose of the stop.”⁷ It was not. Not only must the State prove that the stop was reasonable, it must also establish that the “subsequent police investigation w[as] reasonable in the circumstances.”⁸ Rather, a police officer’s discretion must be “canalized within banks that keep it from overflowing.”⁹

The *Caldwell* Court condemned a police officer’s actions that were similar to those taken by police in our case - arresting an individual on a traffic violation then conducting a pat-down search beyond the scope of the basis of the stop. This Court found that frisking, handcuffing and detaining Caldwell was “entirely unrelated to the parking violation and exceeded the proper scope of a traffic stop for a parking violation[.]”¹⁰ The officer in *Caldwell* did, “prolong[] a traffic stop or use[] the stop as a springboard for a full investigative detention or search.”¹¹ Finally, the *Caldwell* Court concluded that once the officer arrested the defendant, “the traffic stop ended and a second, independent investigative detention began” which required “independent facts sufficient to justify the additional intrusion.”¹²

⁷ *Caldwell*, 780 A.2d. at 1042.

⁸ *Id.* at 1046.

⁹ *Panama Refining Co. v. Ryan*, 293 U.S. 388, 440 (1935) (Cardozo, J. dissenting).

¹⁰ *Caldwell*, 780 A.2d. at 1049.

¹¹ *Id.*

¹² *Id.* at 1047.

The Superior Court in the instant case concluded that the pat-down search of Reed was improper. Here, police exceeded the scope of the traffic stop when they disregarded police standard operating procedure of issuing Reed a summons for his traffic violations and instead shifted their focus to an unsubstantiated pat-down search. A63. Police failed to limit “the duration and execution of [the] traffic stop to the initial purpose of the stop”.¹³ Thus, the drugs obtained as a result of the illegal seizure and search of Reed’s person must be suppressed .

¹³ *Id.*

II. IN CONCLUDING THAT THE POLICE PAT-DOWN OF REED WAS IMPROPER, THE SUPERIOR COURT ERRED IN FINDING THAT THE DISCOVERY OF THE CONTRABAND WAS INEVITABLE.

Question Presented

Does the inevitable discovery doctrine apply when the Court would have to speculate as to the officers actions had Reed's Fourth Amendment Rights against unlawful search and seizure not been violated when he was subject to a pat-down search? The question was preserved by a Motion to Suppress. A-6.

Standard And Scope Of Review

When reviewing a denial of a motion to suppress evidence, this Court reviews the trial court's legal conclusions *de novo*. When reviewing the trial court's factual findings, this Court determines whether the trial court abused its discretion in deciding whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.¹⁴

Argument

This Court, on *de novo* review, should reverse the Superior Court's finding that the inevitable discovery exception to the exclusionary rule insulates the improper search and seizure by the officers' in this case. Given the candid testimony by Wilmington Police concerning their standard operating procedures following traffic stop violations, such as those committed by Reed, it was neither

¹⁴ See *Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008).

inevitable nor reasonably probable that Reed would have been subjected to a pat-down search in violation of the Fourth Amendment of the United States Constitution and Article I, section six of the Delaware Constitution.

The inevitable-discovery doctrine is applied to prevent suppression of evidence if the prosecution can show, by a preponderance of the evidence, that the evidence ultimately or inevitably would have been discovered by lawful means, *based on the standard prevailing investigatory procedure of the law enforcement agency.*¹⁵ The government can meet its burden by demonstrating that, “by *following routine procedures*, the police would inevitably have uncovered the evidence.”¹⁶ The government must also show a nexus between the policy and the search actually conducted.¹⁷

At the June 21, 2013, suppression hearing, Officer Houck was asked by the Court, on direct examination, about the standard operating procedures of the Wilmington Police Department for traffic stops. The following transpired:

The Court: And what is the normal procedure when you stop a vehicle and there’s a driver and they have a suspended license? What is the standard procedure for a Wilmington police officer?

¹⁵ *DeShields v. State*, 534 A.2d 630, 638 (Del. 1987), *citing Nix v. Williams*, 467 U.S. 431, 444 (1984)(emphasis added).

¹⁶ *United States v. Ramirez–Sandoval*, 872 F.2d 1392, 1399 (9th Cir.1989)(emphasis added).

¹⁷ *United States v. Hahn*, 922 F.2d 243, 247 (5th Cir.1991).

Officer Houck: **Issue them a summons.**

The Court: **And you don't arrest?**

Officer Houck: **No.**

The Court: You let them drive off in the vehicle?

Officer Houck: Either drive off or have somebody either park the vehicle, and either have somebody come and get the vehicle that does have a valid license.

A-54 (emphasis added).

The record indicates that issuing a summons was routine operating procedure for Wilmington police officers in situations such as Reed's Title 21 traffic violations. Officer Houck made it clear that engaging in a custodial arrest was not a department policy. Given Houck's testimony, it was neither inevitable nor reasonably probable that Reed would have been subjected to a pat-down search.

The discovery of drugs on Reed's person was not inevitable. It is one thing to show that the incriminating evidence *would* have been discovered inevitably. It is quite another thing to say that such evidence *could* have been so discovered.¹⁸ The latter proposition more closely represents the case at bar. Moreover, the inevitable discovery exception involves no speculative elements but instead

¹⁸ *State v. Harris*, 642 A.2d 1242, 1251 (Del. Super. 1993).

focuses on demonstrated historical facts capable of ready verification or impeachment.¹⁹

The inevitable discovery doctrine does not apply here because the Court speculated as to what the officers would have done following Reed's traffic violations. It's worth repeating that speculation has no place in the inevitable discovery doctrine. Here, there was no nexus between the standard operating procedure for traffic violations of issuing a summons and the full body pat-down search actually conducted. Because there was no reasonable probability that the evidence at issue would have been discovered except for the police misconduct, any evidence seized as a result of the illegal search and seizure must be suppressed.

¹⁹ *Nix*, 467 U.S. at 445 n. 5.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that James Reed's conviction should be reversed.

\s\ Santino Ceccotti
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DATE: October 16, 2013