



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 REPLY BRIEF

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

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DATE: December 3, 2013

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I. 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.

In its answering brief, the State demonstrates a misunderstanding of the record and Reed's argument. The State claims that Reed's position is that "the patdown was improper because police procedure for Reed's traffic violations is to issue a summons, not to arrest." Ans. Br. at 6. To the contrary, Reed argues that based on the record here, it was neither inevitable nor reasonably probable that he would have been subjected to a patdown search. The State also contends that "the patdown of Reed was [] proper." Ans. Br. at 9. Not so. The record reflects that even the trial court found that Reed was unreasonably searched. A-62.

Rather than focusing, as one would expect, on the trial court's ruling, the State chooses to premise its entire argument on the claim that police had probable cause to arrest Reed when they stopped his vehicle. By running away from the finding by the court below, perhaps the State wishes to divert this Court from the fact that the Superior Court actually found that the police patdown was improper. A-62. The State fails to explain why this portion of the trial court's ruling is incorrect.

These omissions are astonishing given that the trial court's ruling was based solely on the ground that the inevitable-discovery doctrine cleansed what was an

unconstitutional search and seizure. A-64. The State avoids addressing this argument in its answering brief, however, because the available authority does not support that position which is reflected by the court below. To prevent suppression of evidence, the prosecution must 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.*¹ That analysis should prevail in this case.

Like the Superior Court, the State fails to recognize that it failed to meet its burden by demonstrating that, “by *following routine procedures*, the police would inevitably have uncovered the evidence.”² As Officer Houck’s testimony revealed, the illegalities in this case did not have the effect of simply accelerating the discovery.

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?

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

The Court: **And you don’t arrest?**

¹ *DeShields v. State*, 534 A.2d 630, 638 (Del. 1987), *citing Nix v. Williams*, 467 U.S. 431, 444 (1984)(emphasis added).

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

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 State's misguided argument and misunderstanding of the facts reveals that the State is unable to justify the trial court's conclusion that the inevitable discovery doctrine cures the unlawful search. Since the search did not satisfy the requirements of the Fourth Amendment of the United States Constitution and Article I, section six of the Delaware Constitution, the evidence obtained therefrom should have been suppressed. Because the trial court refused to suppress the evidence, Reed's conviction must now be reversed.

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
Santino Ceccotti, Esquire

DATE: December 3, 2013