EFiled: Dec 05 2022 12:54PM EST
Filing ID 68505503
Case Number 223,2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAQUAN WOMACK,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 223, 2022
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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DATED: December 5, 2022

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I. THE TRIAL COURT ERRED WHEN IT REFUSED TO SUPPRESS EVIDENCE SEIZED BY POLICE AS A RESULT OF WOMACK'S FLIGHT FROM A DETENTION THAT WAS CONTINUED, WITHOUT INDEPENDENT JUSTIFICATION, BEYOND THE SCOPE OF A LAWFUL TRAFFIC STOP OR FROM AN ARREST THAT WAS NOT SUPPORTED BY PROBABLE CAUSE.

Argument

The car search did not occur immediately upon contact with the occupants as the State's argument implies.[1] Instead, the decision to search was made after Jiminez was cuffed and secured in the back of a patrol car and after Womack was questioned at the back of a patrol car and allowed to return to his seat in the stopped car. The State's argument skips these salient facts because they reveal that Womack was unlawfully detained by the time the search even began.

At the hearing, officers were very clear- Womack gave them no reason to believe he was involved in any criminal activity or that he was a threat to their safety.[2] Officer Webb communicated to Womack he would be "free to go" in "a few minutes." According to Webb, the primary reason for Womack's detention at that point was to determine

[1] See State's Ans. Br. at p. 8.
[2] A36, 40.

"if he could take the vehicle" for the driver.[3] It was following these facts and observations that police asked Womack to exit the car again because they decided to search the car based on probable cause of Jiminez's personal use of marijuana. In other words, he was detained beyond processing the driver's arrest while police took time to decide whether or not to search the car. [4] Thus, upon his second exit, there were no "independent facts justifying" Womack's "second, independent investigative detention[.]"[5]

The State concedes that "where the seizure – arrest or detention – is unlawful, the results of a subsequent search are generally excluded."[6] The State also concedes that discovery of Jiminez's marijuana "did not provide probable cause to arrest Womack[.]"[7] Yet, the State claims, based on an assumed lawful detention, that Womack was not unlawfully arrested when Officer Canaan began to handcuff

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[3]A36.

[4]*State v. Baker* 229 P.3d 650 (Utah 2010) (holding that officers impermissibly detained passengers beyond processing the driver's arrest while they awaited arrival of the K-9 unit).

[5]*Caldwell v. State*, 780 A.2d 1037, 1051 (Del. 2001). Womack does not dispute the authority to search the vehicle. He challenges his continued detention during the search. But, as it turned out, police conceded there was no reasonable suspicion of any criminal activity on his part. See State's Ans. Br. at pp. 10-12 (discussing *Juliano v. State*, 260 A.3d 619 (Del. 2021)).

[6]State's Ans. Br. at pp. 13-14.

[7] State's Ans. Br. at p. 13.

him upon the marijuana discovery because the officer had heightened concern "that additional evidence might be found within the car or within the bag Womack removed from the vehicle."[8] The State provides no legal support for this claim.

The State does rely on the judge's finding that, after the discovery, officers were permitted to handcuff Womack for officer safety.[9] The trial court's conclusion is wrong. The officers testified throughout the hearing that certain procedures are followed for various purposes, including general officer safety. But, Canaan never testified to any increased concern of a threat to individualized officer safety.[10]

Finally, the State slips in an inevitable discovery argument asserting that "[o]nce the officers established probable cause to search the vehicle for marijuana, the permissible scope of their search necessarily included the backpack within the passenger compartment. Womack removed the backpack when officers asked him to exit the car prior to the search."[11] Unfortunately for the State, it failed to raise this issue below.[12] And, contrary to the State's implication, the trial court

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[8] *Id.*
[9] State's Ans.Br. 12-13 (quoting A52) (emphasis added by State).
[10] Op. Br. at pp. 13-14 (citing cases).
[11] State's Ans. Br. at pp. 14-15.
[12] A46-49.

made no finding on this issue. The judge was clear that her reference to the exception was only a side note and that the exception did not "weigh" into her decision.[13] Thus, because "[t]he doctrine of waiver applies equally to the State as it does to a defendant[,]"[14] the State has waived this argument.

If this Court does entertain the State's belated argument, it must conclude that the doctrine is inapplicable. The inevitable discovery exception "provides that evidence obtained in the course of illegal police conduct will not be suppressed so long as the prosecution can prove [by a preponderance of the evidence][15] that [it] 'would have been discovered through legitimate means in the absence of official misconduct.'"[16] Here, the State offered nothing but "speculation based on [its] view of what would have followed based on "best practices" or [its] concept of reasonably thorough police work."[17]

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[13] A53.

[14] *Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008) (finding State waived argument that defendant engaged in consensual encounter with police).

[15] *Nix v. Williams*, 467 U.S. 431, 444 (1984).

[16] *Roy v. State*, 62 A.3d 1183, 1189 (Del. 2012) (quoting *Cook v. State*, 374 A.2d 264 (Del. 1977)).

[17] *United States v. Carrion-Soto*, 493 F. App'x 340, 342–43 (3d Cir. 2012) (finding inevitable discovery doctrine inapplicable when officer unlawfully opened passenger's suitcase found in trunk after obtaining driver's consent to search the car but had not yet found the cocaine or obtained K-9 sniff to detect the presence of any narcotics because not supported by facts in record).

The State claims that once police establish probable cause to search the car, they are permitted to search a passenger's bag even if he removes it from the car.[18] As an initial matter, this is not a settled principle of law even among other jurisdictions. Nonetheless, even if this principle were settled, it is of no use to the State. Here, police chose not to search Womack's bag after he exited the vehicle. Nor did any of the officers testify that they intended to search the bag as part of either the vehicle search or detention.

To prevail on the inevitable discovery exception, the State is required to "do more than establish the possibility that the evidence would have been discovered."[19] Thus, it is not enough that police *could have* searched the bag but chose not to for admissibility under the inevitable discovery doctrine. The facts are simply not as the State wishes them to be in order to support application of the doctrine. Thus, the inevitable discovery doctrine is inapplicable.

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[18] See State's Ans. Br. at p.15.

[19] *Carrion-Soto*, 493 F. App'x at 342. *See Reed v. State*, 89 A.3d 477 (Del. 2014) (noting State's concession that judge's finding of inevitable discovery based on the premise that the driver was going to be arrested and that the drugs would have been discovered during search incident to that arrest was erroneous because record showed that standard procedure was not to arrest drivers for the violation at issue).

CONCLUSION

For the reasons and upon the authorities cited herein,

Womack's conviction must be reversed.

Respectfully submitted,

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DATED: December 5, 2022