



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIJAH REGISTER,)
)
 Defendant Below,)
 Appellant,)
) **No. 396, 2023**
 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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DATE: January 31, 2024

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SUMMARY OF THE ARGUMENT

1. Elijah Register's right to be protected from unreasonable search and seizure was violated when police immediately seized him after observing a brief interaction with the actual target of the police investigation. Because these actions exceeded constitutional limits, this Court should reverse the Superior Court and hold that the evidence was obtained in violation of Register's Fourth Amendment rights and Article I, § 6 of the Delaware Constitution. Thus, his convictions must be reversed.

NATURE AND STAGE OF THE PROCEEDINGS

Elijah Register (“Register”) was indicted on charges of carrying a concealed deadly weapon (“CCDW”) and possession of a weapon with a removed, obliterated or altered serial number. A4. On March 17, 2023, he filed a Motion to Suppress any and all evidence seized as a result of an unlawful pedestrian stop and search including the firearm recovered at issue. A6. The State filed a response, and a hearing was held on July 21, 2023. A13. The motion to suppress was denied by written order on September 26, 2023. (See written ruling, attached as Exhibit A).

A bench trial was held on October 10, 2023 and Register was convicted on both counts. D.I. #18. He was sentenced to 10 years at Level 5 followed by various levels of probation. (See Sentence Order, attached as Ex. B).

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

STATEMENT OF FACTS

On September 21, 2022, members of the New Castle County Police Safe Streets Unit were conducting proactive patrol in the area of Memorial Drive and Route 13 in New Castle, Delaware. The Safe Streets task force included members of probation and parole. A47. In the afternoon on the day in question, Khaalid Lopez was under surveillance pumping gas at Wawa at the corner of Memorial Drive. A37. He was in a white Hyundai sedan with his girlfriend in the driver seat. A38. Lopez, the target of the investigation, was a suspected drug dealer known to Police to deal drugs in the area of Route 40 and Pulaski Highway. A36.

A male subject, later identified as Register, approached Lopez while he was pumping gas. A39. Register had never been a subject of any police investigation and was not on probation. A49. Register and Lopez had a brief conversation and then the two touched hands. A40. No video exists that captures the alleged interaction. A59. Detective Randazzo admitted that portions of his view were obstructed and that Lopez and Register could have been shaking hands. A66-67. This interaction alone prompted Randazzo to call for assisting units and ultimately effectuate seizures of Lopez and Register. A42.

After the vehicle drove away, Lopez was seized and questioned. He stated that he passed a vape to Register. A69. No evidence consistent with a drug transaction was found by Randozzo during the traffic stop. A70. Back at the Wawa, police did not observe Register place anything in his pockets or bag. A92. Upon making contact with Register, Probation Officer Mchugh immediately detained him and asked if he was carrying a weapon. A93. As a probation officer, Mchugh was not wearing a body-worn camera. A94. Police recovered skittles in his pockets and a firearm in his bag after he consented to a search therein. A95.

I. BECAUSE POLICE HAD NO REASONABLE ARTICULABLE AND INDIVIDUALIZED SUSPICION THAT REGISTER WAS ENGAGED IN ANY CRIMINAL ACTIVITY, HIS STOP AND SEIZURE BY A PROBATION OFFICER WAS ILLEGAL.

Question Presented

Whether a claim that police observed an unknown person in the middle of the afternoon at a Wawa conversing and shaking hands with a subject under investigation is a sufficient "hunch" to justify a seizure of the benign citizen? The issue was preserved by a motion to suppress. A6.

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.¹

Argument

This Court, on *de novo* review, should reverse the Superior Court's finding that the officers' actions were not violative of the Delaware or U.S. Constitution based on an unjustified seizure. The rights of Delaware citizens in public places to be free from arbitrary police practices are secured by two constitutional

¹ *Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008).

provisions. The United States Constitution provides that individuals are to be free from unreasonable searches and seizures.² The Due Process Clause of the Fourteenth Amendment applies this right to the states.³ Article I, § 6 of the Delaware Constitution also provides protection against unreasonable searches and seizures.⁴ The Delaware Constitution provides even greater protections than the Federal Constitution.⁵ It is well-settled law that Delaware does not recognize a good faith exception to the warrant requirement. While Delaware cannot give fewer rights to its citizens than the Federal Government, it can give more rights. This Court has firmly held that exclusion of evidence from trial is the required remedy for a violation of the Delaware Constitution's protection against illegal searches and seizures. *Id.* at 872.⁶

The Fourth Amendment of the United States Constitution allows police officers to stop an individual for investigatory purposes if the officer has a “reasonable articulable suspicion that the individual to be detained is committing,

² U.S. Const. amend. IV.

³ *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

⁴ See also *Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

⁵ See generally *Dorsey v. State*, 761 A.2d 807 (Del. 2000).

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).

has committed, or is about to commit a crime.”⁷ Moreover, the actions of an officer may not exceed the proper scope of the seizure and any additional intrusive measures must be supported by independent facts, known to the officer at the time.⁸ A reasonable suspicion has been defined by the United States Supreme Court as an officer's ability to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[s] the intrusion.”⁹ To determine if reasonable articulable suspicion exists, the Court “must examine the totality of the circumstances surrounding the situation as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts.”¹⁰

The record fails to establish that police had reasonable suspicion to seize Register. The probation officer's warrantless stop violated Register's rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the Delaware Constitution. In the instant case, police failed to establish that there was reasonable, articulable suspicion that Register had engaged in criminal activity. To support a finding of reasonable and articulable

⁷ *State v. Henderson*, 892 A.2d 1061, 1064 (Del. 2006) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

⁸ *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

⁹ *Terry*, 392 U.S. at 21.

¹⁰ *United States v. Cortez*, 449 U.S. 411, 417-18 (1981).

suspicion, "the totality of the circumstances [must] indicate[] that the [detaining] officer had a particularized and objective basis for suspecting legal wrongdoing" at the time he engages in the seizure.¹¹ To possess reasonable suspicion with respect to the individual, the detaining officer must be aware of factors that are specific and particular to that individual. This "demand for specificity in the information upon which police action is predicated is the central teaching of th[e United States Supreme] Court's Fourth Amendment jurisprudence."¹²

Here, Probation Officer Mchugh stopped and seized the Register based on information provided by Detective Randazzo, which amounted to solely a brief observation of a handshake with a person of interest at a Wawa in broad daylight. A40. This detention occurred immediately after Lopez drove away and before Randazzo made contact with the occupants of the vehicle and found no evidence of a drug transaction. Register was immediately stopped and seized by Probation Officer Mchugh without first establishing reasonable suspicion that he had committed, was committing or was about to commit a crime. At the time Register was detained, the officer had no information specific or particular that linked him to any criminal activity. Thus, the stop was unlawful. Any evidence discovered as a result of the unlawful stop should have been suppressed as fruit of the

¹¹ *Sierra v. State*, 958 A.2d 825, 828 (Del.2008).

¹² *Terry v. Ohio*, 392 U.S. 1, 21 n.18 (1968).

poisonous tree.¹³

“[T]he balance ought to be struck on the side of the freedom of the citizen from governmental intrusion. To conclude otherwise would be to elevate society’s interest in apprehending offenders above the right of citizens to be free from unreasonable stops.”¹⁴ “There is nothing new in the realization that the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all.”¹⁵

In this case, "the detaining officer's belief that [Register] was a drug courier “was more an ‘inchoate and unparticularized suspicion or hunch’ than a fair inference [and] is simply too slender a reed to support the seizure in this case.”¹⁶ "The observed behavior by an unknown person standing next to and conversing with a known drug suspect gave police a “hunch” that the unknown person might be involved with the target of their investigation.”¹⁷ This was the extent of Register’s activity. The factors available to police at the time of the stop were equally applicable to a substantial proportion of the innocent general public.¹⁸ Register does not lose his immunity from search and seizure, to which he would otherwise be entitled simply because his mere presence at a Wawa in a high crime

¹³ See *Jones*, 745 A.2d at 874.

¹⁴ *Id.* at 868 (citing *State v. Oquendo*, 613 A.2d 1300, 1312 (Conn. 1992)).

¹⁵ *California v. Hodari D.*, 499 U.S. 621, 626 (1991).

¹⁶ *Harris v. State*, 806 A.2d 119, 122 (Del. 2002).

¹⁷ *Lopez-Vazquez*, 956 A.2d at 1291.

¹⁸ *Reid v. Georgia*, 448 U.S. 438, 442 (1980).

area or the vicinity of a general surveillance by police.¹⁹

Thus, Register's detention and subsequent arrest violated the well-worn tenets of both the United States and Delaware protections against unlawful search and seizure. Consequently, all evidence obtained as a result of the unlawful seizure should have been suppressed.

¹⁹ See *Ybarra v. Illinois*, 444 U.S. 85, 95-96 (1979) (citing *United States v. Di Re*, 332 U.S. 581, 587 (1948)).

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Elijah Register's convictions should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: January 31, 2024