



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 REPLY BRIEF

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

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DATE: September 17, 2024

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**I. BECAUSE POLICE HAD NO REASONABLE
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SUSPICION THAT REGISTER WAS ENGAGED IN
ANY CR the SIMINAL ACTIVITY, HIS STOP AND
SEIZURE BY A PROBATION OFFICER WAS
ILLEGAL**

The State in its Answering Brief serves a plate full of icing and a few crumbs of cake. It is astonishing that the State has tried to explain in general and at length that Register and Lopez, the target of the investigation, engaged in a “hand-to-hand transaction of some type” witnessed by two experienced officers- inferring that it must have been a drug interaction – and yet ignore the fact that portions of the officer’s views were obstructed and admitted that Register could have been shaking hands with the target. A66-67. Ans. Br. at 10-11. Even the State admits that “[n]either Randazzo, nor Detective Guarino could see exactly what Lopez handed [if at all] to Register [.]” Ans. Br. at 11. The State has not responded to that argument because the record does not support that position which is reflected in the State’s argument and the Superior Court’s reasoning below. Because the trial court’s factual findings are clearly erroneous, they cannot be used to support a finding of reasonable suspicion and thus should not be upheld in this instance. *Lopez-Vazquez v. State*, 956 A.2d 1280, 1291 (Del. 2008).

Police Officer’s general claim that Register “appeared at the pumps [at a Wawa] and engaged in a hand-to-hand transaction of some type” did not justify his detention and subsequent search. Ans. Br. at 10. There is no dispute that to

establish reasonable suspicion, police must “identify the crimes that an objectively reasonable police officer might suspect to a fair probability” the individual is committing. *Juliano v. State*, 260 A.3d 619, 631 (Del. 2021). Apparently, the State does not recognize that the officers' suppression hearing testimony amounts to a failure to state with “a particularized and objective basis” the crime they suspected to a fair probability Register committed. *United States v. Brown*, 159 F.3d 147, 149 (3d Cir. 1998). Therefore, police testimony “fail[ed] to demonstrate any objective basis to believe that criminal activity was afoot at all.” *United States v. McCray*, 148 F. Supp. 2d 379, 382 (D. Del. 2001).

The authority that the State relies on does not support the State’s position and, in fact, supports the Defendant’s argument when examined closely. The State attempts to align supportive legal authority, however its reliance on *Terry*, *Wright*, *Brown*, *Hurst* and *McDougal* in its answering brief is misplaced. Ans. Br. at 13.

In *Terry*, unlike here, the subject who was stopped and detained was the target of the original investigation. *State v. Terry*, 2020 WL 1646775, at *1 (Del. Apr. 2, 2020). Moreover, officers conducted a valid stop of the subject’s vehicle for a window tint violation. *Id.* The Supreme Court upheld the police officer’s detention and search because in addition to the observation of a hand-to-hand exchange, police noticed a strong odor of marijuana. *Id.* at *2. Even the State

acknowledges that the “hand-to-hand exchange *was part* of the probable cause”, where in the instant case it was lone component. Ans. Br. at 12.

Similarly, in *Wright*, the subject who was stopped and arrested was the target of the original investigation. *Wright v. State*, 2014 WL 1003584, at *1 (Del. Mar. 7, 2014). One significant distinction from the instant matter is that *Wright* did not involve a challenge from a motion to suppress but rather a motion for judgment of acquittal stemming from a conviction. *Id.* Thus, the Court did not conduct a reasonable articulable suspicion analysis. Moreover, the officers in *Wright* again observed more than on this record. For example, the defendant was approached by several different subjects, who would hand him what appeared to be currency in exchange for a small, imperceptible object. Officers then saw the defendant walk about thirty feet to a trashcan, lean over at the waist and place a small and dark object inside the trashcan and walk back. *Id.*

Brown involved a non-merit brief filed pursuant to Supreme Court Rule 26(c) and the Court did not conduct a reasonable articulable suspicion analysis as suppression was not at issue. *Brown v. State*, 2013 WL 434054, at *1 (Del. Feb. 4, 2013). Additionally, police observed more than just a single hand-to-hand transaction. Police observed several individuals approach Brown and then follow him into an adjacent courtyard. Each time, the individuals emerged after approximately two to three minutes. After observing these activities for about

fifteen minutes, police moved their vehicle so as to have a better vantage point. Eventually, they saw what they believed to be a hand-to-hand drug transaction between Brown and two women. *Id.*

The record in *Hurst* also included more than just a single hand-to-hand contact. In *Hurst*, police officers staked out the target residence and observed two subjects repeatedly coming out of the residence, making contact with cars stopped in front of the house, returning inside the house, and then going back out to the cars and engaging in a hand-to-hand transaction. *Hurst v. State*, 2013 WL 85109, at *1 (Del. Jan. 7, 2013).

Finally, in *McDougal* the hand-to-hand exchange was again only part of the reasonable articulable suspicion analysis. The record included many additional factors not present here. Police were conducting surveillance in a high crime known by police to have drug trafficking activity. The officer's attention was drawn to McDougal, who then entered the alleyway next to a vacant row house. After a few seconds, McDougal walked onto the porch of the property which he neither owned nor resided. Another man then entered the porch and stayed a couple of minutes. Thereafter, two other African American men approached the property and police observed McDougal walk back to the alleyway and then quickly leave. Thereafter, police observed McDougal engage in some kind of interchange with one of the men. It appeared to police that McDougal engaged in a

“hand-to-hand” transaction involving the exchange of drugs and money.

McDougal v. State, 2012 WL 3862030, at *1 (Del. Sept. 5, 2012).

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.

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: September 17, 2024