IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-GHANIYY PRICE,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 228, 2024
	)	
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: November 13, 2024

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I. BECAUSE POLICE LACKED OBJECTIVE AND SPECIFIC FACTS LINKING PRICE OR THE JEEP GRAND CHEROKEE HE OCCUPIED TO ANY POSSIBLE CRIMINAL ACTIVITY WHEN FIVE OFFICERS SEIZED HIM, THE TRIAL COURT ERRED WHEN IT REFUSED TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF THAT SEIZURE.

The State correctly recognizes[1] that, under *Jones v. State*, seizure only occurs for purposes of Article I, § 6 of the Delaware Constitution when police have engaged in "conduct that would communicate to a reasonable person that he or she was not free to ignore the police presence."[2] To ignore police presence is simply "to refuse to take notice of" police presence.[3]

Based on this concession, the State must also agree that it is incorrect to say, as the trial court did, that alternative means of establishing when a seizure *first* occurs include scenarios where facts are such that the suspect

> will have to respond to the police officers when they have shown enough control over the circumstances, and given commands such that one would not believe that they have, you know, can ignore that presence and ignore the intrusion[.] [4]

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[1] State's Resp. Br. at p.12.

[2] *Jones v. State*, 745 A.2d 856, 869 (Del. 1999).

[3] Ignore Definition & Meaning - Merriam-Webster (last visited 09/25/2024).

[4] A56. Contrary to the State's assertion, Price does not contend there would be a difference in the analysis if the trial court had said only "will have to respond to the police officers when they have shown enough control over the circumstances" versus "will have to respond to the police officers when they have shown enough control…" State's Resp. Br. at 12.

Because the parties agree that a seizure occurs as soon as police engage in "conduct that would communicate to a reasonable person that he or she was not free to ignore the police presence,"[5] the issue becomes whether the trial court properly applied that standard in this case. Had the trial court done so, it would have been required to conclude that Price was seized as soon as three marked police SUVs parked in front of and behind[6] the Jeep on a residential street and trained their headlights on the Jeep, (prior to 2:22:06 a.m.). Accordingly, the trial court's finding that a seizure did not happen until after Corporal Webb noted the dropping of the heroin, identifying the substance as potentially being heroin, and ordering Price out of his Jeep is erroneous.

A reasonable person would not feel free to ignore presence the moment he is surrounded by the three SUV's and approached by multiple armed officers. The evidence does reveal that, in fact, in addition to the two SUV's in front of the Jeep, there was a third SUV behind it.[7] That vehicle was operated by Officer Bolden and was the vehicle from which Officer Montan approached Price on foot.[8] The State attempts to explain

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[5] *Jones*, 745 A.2d at 869.
[6] There were two SUV's in front of and one SUV behind the Jeep.
[7] State's Resp. Br. at p.13.
[8] A38.

away the fact that a seizure occurred at this point by erroneously pointing to the reasons for the officers' conduct.

Regardless of the reasons for police conduct, it is what that conduct communicated to Price that determines when the seizure first occurred. Here, a reasonable person: could conclude the SUVs were positioned so as to prevent him from driving away; would not feel free to pull forward with two sets of headlights in his eyes, drive between the two police SUVs and negotiate three armed officers who are approaching the vehicle on foot; would not feel free to turn around to go in the other direction with armed officers approaching on foot and a police SUV behind him with its headlights on.

By 2:22:18 a.m., the moment Price purportedly dropped the heroin, Officer Montan already had her flashlight on and shining directly into the rear window of the Jeep through the front windshield.[9] Further, Webb was purportedly close enough to see a dime sized (in width and height at least) object fall out the bottom of the door by the curb in the dark. Accordingly, before Price dropped that item, and before Webb identified it, Price had been seized.

[9] Ivory, at 2:22:18 a.m.; Bochanski, at 2:22:18 a.m.

The State places its own spin on the circumstances and erroneously argues there was no seizure until after the drugs were dropped to the ground. The circumstances are set out for the Court to view in the body worn camera videos. Price maintains that, under *Jones*, the totality of those circumstances supports the conclusion that he was seized well before the drugs were dropped to the ground.[10] And, despite the State's arguments to the contrary, Price maintains that the trial court did make clearly erroneous findings of fact.[11]

Significantly, the State chose not to directly address Price's legal argument that the presence of 5 uniformed officers is an important factor to consider in determining whether a seizure has occurred. Instead, the State simply explains that the trial court's comments about the number of officers was a response to defense counsel's arguments that there was a significant number of officers who arrived. This may be so, but it does not take into consideration that those numbers communicate to a reasonable person that he is not free to ignore police presence. [12]

Finally, the State relies on federal cases to support its claim that the use of flashlights does not amount to a seizure. On the other hand, Price

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[10] Op. Br. at pp. 13-15.
[11] Op. Br. at pp. 15-16.
[12] *United States v. Mendenhall*, 446 U.S. 544, 554 (1980).

relies on Delaware cases in explaining that the use of flashlights is a factor to consider in the calculus to determine if there was a seizure.[13]

The State erroneously argues that police had reasonable suspicion of criminal activity based on "Webb's testimony that the Cherokee was not regular to the neighborhood, it was 2 a.m., and that it had been running for over an hour outside residences[;]" Webb's suspicion, based on his experience, "that the behavior was consistent with a person considering committing a burglary or theft in the neighborhood[;]" and the "fact that police were responding to a 911 call[.]"[14]

None of these are objective factors linking either Price or the Jeep to any possible criminal activity. In fact, Webb testified that he had no information linking the Jeep or the driver to any criminal activity when police went to investigate the "suspicious vehicle." Police were responding to a 911 caller's generalized and subjective suspicions. The officer's "suspicions" that are consistent with a person "considering" the commission of a crime fails to provide the particularized reasonable suspicion necessary for a lawful seizure.[15] Stated differently, when police arrived on

[13] Op. Br. at pp. 15-16.
[14] State's Resp. Br. at p. 23.
[15] *Jones*, 745 A.2d at 871.

scene and seized Price, they relied on nothing more than "an inchoate and unparticularized suspicion or hunch[.]"[16]

Glaringly, the trial court's decision does not find that Webb had reasonable suspicion of any criminal activity to seize Price as a result of the 911 call. Rather, it asserts that the officer's "experience and his concerns at that time" would have justified a more intrusive stop.[17] The court did not identify what details from the 911 call provided Webb with reasonable specific and articulable suspicion that criminal activity was afoot and that either Price and/or the Jeep was linked to that activity.

The State acknowledges that Webb "approached the Cherokee based upon the initial 911 call, and not based upon the observable Title 21 violation."[18] In its effort to justify the trial court's use of a motor vehicle offense as justification for the seizure, the State cites to *West v State*[19] That case does not address our situation. In *West*, there was never a question that the stop was initiated as the result of motor vehicle violations. However, the officer did not believe he had a basis to stop the car and did not intend to cite the driver for the violation. The trial court made a finding

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[16] *Alabama v. White*, 496 U.S. 325 (1990).
[17] A56.
[18] State's Resp. Br. at p. 24.
[19] 143 A.3d 712 (Del. 2016).

that, indeed, the officer did have reasonable suspicion to stop the car based on the conduct for which he did stop him. This is not the same as the trial court supplanting its own reason for conducting a stop in the first place.

The State also points to an irrelevant difference between our case and *Reed v. State*[20] in a misguided effort to distinguish the legal conclusion in *Reed*. The State argues that *Reed* is different because the offenses at issue there are "status" offenses. Well, this Court's decision in Reed did not turn on whether the offenses were "status" offenses, it turned on the fact that they were offenses that had been the alleged basis for the stop. the fact that the offenses at issue were "status" offenses. They were the purported basis for the stop. This Court concluded that the trial court was clearly erroneous in relying on the premise that *Reed* was going to be arrested for those offenses given the officer's testimony that the "standard procedure in dealing with a driver whose license is suspended is to issue a summons and, either let the driver leave, or park the car and have someone come to pick up the unlicensed driver. He specifically stated that the standard practice is not to arrest the driver." [21]

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[20] 89 A.3d 477 (Del. 2014).
[21] *Reed v. State*, 89 A.3d 477 (Del. 2014).

Here, Webb's testimony made it clear that his standard practice was not to cite individuals for parking on the wrong side of the road. So, similar to the trial court in *Reed*, the trial court in our case was clearly erroneous in relying on the premise that police could have arrested Price for a parking violation.

"The exclusionary rule acts as a remedy for a violation of a defendant's right to be free of illegal searches and seizures. It provides for the exclusion from trial of any evidence recovered or derived from an illegal search and seizure."[22] The officers in this case did not have reasonable suspicion to believe that Price had committed or was committing a crime. Therefore, there was no lawful reason to seize Price. The evidence recovered as a result of the illegal seizure should have been suppressed. His convictions must now be reversed.

[22] *Jones*, 745 A.2d at 872 (citing *Mapp v. Ohio*, 367 U.S. 643 (1961); *Wong Sun v. United States*, 371 U.S. 47 (1963)).

CONCLUSION

For the reasons and upon the authorities cited herein, Price's convictions must be vacated.

Respectfully submitted,

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DATED: November 13, 2024