

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMETRIUS DEMBY,	§	
	§	No. 316, 2007
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
	§	for New Castle County
v.	§	
	§	
STATE OF DELAWARE	§	ID # 0604011029
	§	
Plaintiff Below,	§	
Appellee.	§	
	§	

Submitted: December 4, 2007
Decided: February 28, 2008

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 28th day of February 2008, it appears to the Court that:

(1) Defendant-Appellant Demetrius Demby appeals his Superior Court convictions of Possession with Intent to Deliver a Controlled Substance, Use of a Vehicle for Keeping Controlled Substances, and Driving Without Wearing a Seatbelt. Demby argues that the trial court abused its discretion by admitting a controlled substance into evidence because it had not been properly authenticated. He also argues that the police officers' stop of his vehicle was a pretextual stop in violation of the Delaware Constitution. This issue was not presented below except by a conclusory assertion that his state constitutional rights were violated. We find

no abuse of discretion by the Superior Court in deciding the issues properly presented to it. Accordingly, we affirm.

(2) On April 15, 2006, Demby and another person were traveling westbound on Fourth Street. Two Wilmington Police Officers, driving in the opposite direction on Fourth Street, saw that Demby was not wearing a seatbelt.¹ The officers reversed direction and began to follow him. Officer David Ledesma ran the license plate and determined that the car was registered to Demby and that Demby had a suspended license. Officer Ledesma later explained that they had planned to stop him regardless because he was not wearing his seatbelt. At that time, one of the officers saw Demby “make a movement towards the middle console” before coming to a complete stop four blocks later.

(3) Officer Ledesma approached the driver’s side window and asked Demby for his license, registration, and insurance. Demby told him that he was not sure whether his license was suspended or not. After determining that Demby was driving the vehicle, Officer Ledesma returned to his car and ran his name through DELJIS.² He discovered that Demby had outstanding capiases and his

¹ One officer also noticed that Demby’s passenger also was not wearing a seatbelt.

² There is no dispute that the officer did not check Demby’s name for outstanding capiases until after he had stopped the vehicle and approached him.

license had been suspended.³ The officers arrested Demby and searched his vehicle incident to that arrest. The other officer, Corporal Donald Cramer, found twenty one bags of a chunky white substance of what he believed was crack cocaine. Demby waived his *Miranda* rights and admitted that the drugs were his and that his passenger had nothing to do with them.

(4) Corporal Cramer field tested the drugs and determined them to be cocaine. The weight of the drugs and the packaging was 4.9 grams. Following this field test, Corporal Cramer placed the drugs into a departmental drug envelope and documented the contents. He then sealed the envelope and took it to be secured in the department's drug and evidence locker.⁴ Corporal Cramer also explained that in the normal course of business, as in this case, the department drug officer would remove the envelope and turn it over to the State medical examiner's office for analysis. Farnum Daneshgar, a forensic chemist from the medical examiner's office, testified that he had received the sealed envelope from the police department and that the substance was cocaine-based crack weighing 1.65 grams. Master Corporal Vincent DiSabatino also testified on the chain of custody and verified that he had taken the envelope from the evidence locker to the medical

³ Officer Ledesma also asked for his passenger's name, which he gave him. Because his passenger also had outstanding capiases for his arrest, the officers arrested him as well.

⁴ Corporal Cramer testified that his normal routine would be to take the sealed envelope to the evidence locker "by myself to either our lieutenant or our supervisor, our sergeant."

examiners office. Following the chemical analysis, Master Corporal DiSabatino retrieved the envelope from the medical examiner's office and returned it to the departmental drug safe until Corporal Cramer requested it that morning for Demby's trial. Demby's chain of custody objection was overruled. A jury convicted Demby of all charges and he was sentenced as a habitual offender to life imprisonment. This appeal followed.

(5) Demby first argues that the State did not properly authenticate the controlled substances before they was admitted into evidence. We generally review the trial judge's determination that the State sufficiently identified and authenticated an item of physical evidence under D.R.E. 901 for an abuse of discretion.⁵

(6) "In general, Delaware's chain of custody law requires that the State authenticate the evidence proffered and eliminate the possibilities of misidentification and adulteration, not to an absolute certainty, but simply as a matter of reasonable probability."⁶ Chain of custody is governed by 10 *Del. C.* § 4331, which defines "chain of custody" as "[i] the seizing officer; [ii] the packaging officer, if the packaging officer is not also the seizing officer; and [iii]

⁵ *Cole v. State*, 922 A.2d 364, 374 (Del. 2007); *Cabrera v. State*, 840 A.2d 1256, 1263 (Del. 2004); *Demby v. State*, 695 A.2d 1127, 1133 (Del. 1997); *Tricoche v. State*, 525 A.2d 151, 152 (Del. 1987).

⁶ *Demby*, 695 A.2d at 1131.

the forensic toxicologist or forensic chemist or other person who actually touched the substance and not merely the outer sealed package in which the substance was placed by the law enforcement agency before or during the analysis of the substance.”⁷ This Court has explained that these provisions “eliminate the required appearance at trial of those individuals who merely handle contraband evidence in sealed packages during its transportation between a law enforcement agency and the State Medical Examiner’s office, as well as those who handle the evidence after it has been tested.”⁸ Further, a defendant “may introduce evidence that contradicts the presumptions raised by the statutes” and “raise issues concerning possible contamination . . . or tampering during transportation.”⁹

(7) Corporal Cramer was the seizing officer as well as the packaging officer and testified for the State, among other reasons, to establish the chain of custody. The forensic chemist from the State medical examiner’s office also testified about the contents of the package he had received from the police department. Although he was not required to testify in order to establish the chain

⁷ 11 *Del. C.* § 4331(1). Chain of custody “does not include a person who handled the substance in any form after analysis of the substance.” 11 *Del. C.* § 4331(2). Section 4331(3) provides:

[A] statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

⁸ *Demby*, 695 A.2d at 1131.

⁹ *Id.* at 1132; 11 *Del. C.* § 4331(3)(d).

of custody under Section 4331, DiSabatino explained that the normal routine would have been for either him or another supervisor to have watched Cramer inventory the envelope and seal it before Cramer would have dropped it in the evidence locker.

(8) Demby argues that Corporal Cramer may have delivered the sealed envelope to someone else who then placed it in the evidence locker for Master Corporal DiSabatino to remove. This person would be the equivalent of “those individuals who merely handle contraband evidence in sealed packages during its transportation between a law enforcement agency and the State Medical Examiner’s office.”¹⁰ Accordingly, the chain of custody is not broken by the absence of testimony from an individual within the law enforcement agency who may have handled the transportation of a sealed package. Demby’s argument goes to the weight of the evidence, not its admissibility. The Superior Court did not abuse its discretion in finding that the State established the chain of custody.

(9) Demby also argues that weight of the drugs during the field test was different than that of the medical examiner’s report, that the complaint number the medical examiner’s report was “9 numbers off the sequential complaint number assigned to Demby’s case by police.” We agree with the Superior Court that these

¹⁰ *Demby*, 695 A.2d at 1131.

discrepancies were questions regarding the weight of the evidence and not its admissibility.¹¹

(10) Next, Demby argues that the Superior Court abused its discretion in denying his motion to suppress the drugs. Specifically, he contends that the police stopped his vehicle based on the pretext of a motor vehicle violation and that his rights were violated under the Delaware Constitution. Following an evidentiary hearing on his motion to suppress, the Superior Court denied the motion. We review a ruling on a motion to suppress for abuse of discretion.¹² To the extent that an evidentiary ruling implicates an alleged constitutional violation relating, this Court exercises review *de novo*.¹³

(11) Failing to wear a seatbelt is a violation of 21 *Del. C.* § 4802(a)(1). “Notwithstanding any law to the contrary, any police officer is authorized to make an administrative stop for purposes of enforcing this section, upon reasonable and articulable suspicion that a violation of this section has occurred.”¹⁴ Demby argues that the stop for his failure to wear a seatbelt was pretextual.

¹¹ *Id.* at 1133 (“[T]hese factual discrepancies, and the inferences to be drawn from them, go to the weight to be accorded the evidence rather than to its admissibility.”).

¹² *Rambo v. State*, -- A.2d --, 2007 WL 4462215, at *2 (Del. Supr.); *Flonnory v. State*, 893 A.2d 507, 515 (Del. 2006); *Smith v. State*, 887 A.2d 470, 472 (Del. 2005); *Wien v. State*, 882 A.2d 183, 188 (Del. 2005).

¹³ *Rambo v. State*, -- A.2d --, 2007 WL 4462215, at *2; *Flonnory*, 893 A.2d at 515; *Harris v. State*, 2005 WL 2219212, at *1 (Del. Supr.); *Garvey v. State*, 873 A.2d 291, 298 (Del. 2005).

¹⁴ 21 *Del. C.* § 4802(j).

(12) In *Howard v. State*,¹⁵ we acknowledged, as we did in *Caldwell v. State*,¹⁶ that the U.S. Supreme Court has rejected the argument that a pretextual traffic stop violates the Federal Constitution. We did not reach the issue of whether a pretextual traffic stop would violate the Delaware Constitution in *Howard* because “the police in this case had probable cause to believe Howard had engaged in illegal drug activity before they stopped the automobile.”¹⁷

(13) In this case, the Superior Court accepted the police testimony that Demby was driving without wearing a seat belt. The motion to suppress cites to *Whren v. United States*,¹⁸ which holds that a traffic stop is reasonable so long as the officer has probable cause to believe that the driver has violated a traffic law.¹⁹ During the motion to suppress, the Superior Court found that no evidence refuted Officer Ledesma’s testimony that he pulled Demby over because he saw that Demby was not wearing his seatbelt. The Superior Court did not abuse its discretion in applying well-settled federal law to Demby’s federal claim.

(14) Notwithstanding the federal law, Demby argues that suppression is required under the Delaware Constitution and relies upon *State v. Heath*²⁰ to

¹⁵ 2007 WL 2310001 (Del. Supr.).

¹⁶ 780 A.2d 1037 (Del. 2001).

¹⁷ *Howard*, 2007 WL 2310001, at *2.

¹⁸ 517 U.S. 806 (1996).

¹⁹ *Id.* at 813-14; *Caldwell*, 780 A.2d at 1044 n.9.

²⁰ 929 A.2d 390 (Del. Super. Ct. 2006).

support his argument. In *Heath*, the Superior Court found that a pretextual traffic stop violates the Delaware Constitution. The rationale of *Heath* was not argued before the Superior Court, nor was it addressed by the trial judge *sua sponte*. At the time of Demby's suppression hearing, *Heath* had not even been decided.²¹ The record in this case shows only a conclusory allegation of a violation of the state constitution before the Superior Court. In *Ortiz v. State*, decided before Demby's motion to suppress, this Court said, "In the future, conclusory assertions that the Delaware Constitution has been violated will be considered to be waived on appeal."²² The argument Demby now makes was waived.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

²¹ *Heath* was decided eight days after Demby's motion to suppress hearing was denied. Demby's motion to suppress hearing was November 20, 2006. *Heath* was decided November 28, 2006. Demby's trial was April 3, 2007.

²² *Ortiz v. State*, 869 A.2d 285, 291 n.4 (Del. 2005) (providing a framework for addressing Delaware Constitutional arguments); *accord Jones v. State*, 745 A.2d 856, 864-65 (Del. 1999) (same).