

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM ROTEN,	§	
	§	No. 249, 2005
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0403025196
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 30, 2005

Decided: December 21, 2005

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 21st day of December 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. William Roten, defendant-below appellant (“Roten”), appeals from a Superior Court order denying his motion to suppress evidence in his trial on criminal charges arising from a car break-in. Roten contends that the evidence seized by the police after his arrest was obtained illegally, because the police lacked reasonable grounds to initially detain him and lacked probable cause to arrest him. Neither argument has merit. Because the Superior Court did not abuse its discretion in denying Roten’s suppression motion, we affirm.

2. At approximately 1:00 a.m. on March 31, 2005, New Castle County Police Corporal John Dale responded to a complaint that a suspicious person was looking into parked cars in the Summit Bridge Farms subdivision in Middletown, Delaware. Corporal Dale arrived at the development within minutes of receiving the call, and saw only one thing moving in the area—a white Chevrolet, occupied by two men, that was approaching Corporal Dale. The Chevrolet pulled alongside the patrol car until the drivers' sides were next to and parallel to each other. Officer Asbell also arrived at the scene and placed his patrol car at the intersection, blocking the Chevrolet's exit.

3. The driver of the Chevrolet was Donald Dussell; the passenger was Roten. Dussell had his window down and spoke to Corporal Dale while both officers were still inside their cars. Dussell told Corporal Dale that Roten and he were looking for two girls they had met earlier in the evening in Newark, but were lost. While speaking with Dussell, Corporal Dale spotted what appeared to be a woman's purse in the road behind the Chevrolet.

4. Corporal Dale asked Dussell to pull over, and then exited his patrol car. Corporal Dale stood and looked in the driver's side of the Chevrolet, while Officer Asbell looked in from the passenger side. Corporal Dale noticed that Dussell and Roten were shaking and wet and that Dussell had a flashlight between his legs. Although it had been raining earlier that night, it was not raining at that moment.

Officer Asbell alerted Corporal Dale that he noticed tools in a duffel bag on the passenger side floorboard. The officers then removed Dussell and Roten from their Chevrolet and arrested and handcuffed them.

5. A third policeman, Officer Irvin Watson, testified at trial that after he (Watson) came to the arrest scene Corporal Dale asked him to retrieve the purse. Watson testified that the purse was not in the road as Corporal Dale had testified, but was lying on the grass off the side of the road. The purse belonged to a woman living nearby, who had left it in her car. One of her car windows had been broken, and her black leather jacket was found on the back seat of the stopped Chevrolet after the arrest.

6. Roten was charged with possession of burglary tools, conspiracy second degree, misdemeanor criminal mischief and misdemeanor theft. Before trial, Roten moved to suppress the evidence obtained by the police. After a hearing, the Superior Court denied the motion, finding that the police had legally detained the men because they reasonably suspected that they had just committed a crime. The Court also found that after the initial detention, the officers' observations gave the officers probable cause to arrest the men. Roten's case proceeded to trial and he was found guilty on all counts. Roten appeals from those convictions and resulting sentences.

7. The Fourth Amendment of the U.S. Constitution and Article 1, Section 6 of the Delaware Constitution protect persons from unreasonable searches and seizures.¹ The remedy for violations of this constitutional right is the exclusion at trial of the evidence seized or derived from the illegal arrest and search.² Roten sought to exercise this remedy before his trial on the ground that his detention and arrest violated his constitutional rights.

8. Roten claims that in denying his motion to suppress evidence, the Superior Court erred in two respects. First, Roten contends that the police seized him at the moment his car was stopped next to Corporal Dale's patrol car, at which time the police had no facts or information that could have supported a reasonable articulable suspicion of criminal activity justifying the detention. Second, Roten contends that even after further investigation the police had no additional facts or observations sufficient to provide probable cause to arrest him. This Court reviews the denial of a motion to suppress evidence after an evidentiary hearing for abuse of discretion.³

9. The police may stop and detain an individual for investigative purposes if they have a reasonable and articulable suspicion that the person is committing or

¹ U.S. CONST. amend. IV; DEL. CONST. art. 1, § 6.

² *Mapp v. Ohio*, 367 U.S. 643 (1961); *Dorsey v. State*, 761 A.2d 807, 818 (Del. 2000).

³ *Gregory v. State*, 616 A.2d 1198, 1200 (Del. 1992) (citing *Alston v. State*, 554 A.2d 304, 308 (Del. 1989)).

has committed a crime.⁴ Reasonable and articulable suspicion means an officer's ability to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.⁵ These facts and inferences are considered in light of "the totality of the circumstances 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."⁶

10. Roten contends that the police "seized" him when they initially stopped his car and blocked him from proceeding, at which point there was no basis for a reasonable articulable suspicion that a crime had been committed. We disagree. Although Officer Asbell's patrol car eventually blocked their progression, Roten and Dussell voluntarily stopped their car next to Corporal Dale's patrol car and initiated a conversation with him. Legally, the point where a "seizure" first occurred was when Corporal Dale told Dussell to pull his car over to enable Dale to approach Dussell's car on foot. The issue then becomes whether at that point, the police had reasonable suspicion to justify detaining Roten and Dussell.

⁴ *Terry v. Ohio*, 392 U.S. 1, 20 (1986); 11 *Del. C.* § 1902(a) (2005); *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (defining "reasonable ground" from the Delaware Code as a reasonable and articulable suspicion).

⁵ *Jones*, 745 A.2d at 861 (citing *Terry v. Ohio*, 392 U.S. 1, 14 (1968)). See also *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989).

⁶ *Quarles v. State*, 696 A.2d 1334, 1337 (Del. 1997).

11. The Superior Court found that Corporal Dale and Officer Asbell had a reasonable and articulable suspicion that would justify detaining Roten and Dussell, for three reasons. First, the officers were aware of a complaint that a suspicious person had been looking into parked cars in that development, at one o'clock in the morning, evidencing an intent to break into one of the cars. The police had specific details about the kind of criminal activity they were investigating. A rational inference from that information was that the only persons seen moving about in that manner, in that area, and at that time of night (and only minutes after the complaint was received), might have some connection to the alleged criminal activity.

12. Second, it was the defendants who voluntarily approached the police, stopped next to Corporal Dale's patrol car, and initiated a conversation in which the defendants told Corporal Dale an implausible story about looking for two women they had previously met in Newark, and thereafter getting lost in the Middletown neighborhood. That story further supported the inference that the defendants might have been involved in the alleged criminal activity.

13. Third, while listening to the defendants' narrative, Corporal Dale spotted what appeared to be a woman's purse on the road behind the Chevrolet. It was reasonable for Corporal Dale to suspect that the purse had been stolen from a

parked car in the neighborhood, which would evidence that criminal activity had occurred.

14. Roten contends that although the purse may have triggered a suspicion, the contradictory trial testimony regarding the purse's location indicated that Corporal Dale could not have seen the purse at the time he claimed he did. Roten's argument is unpersuasive. Whether the purse was, in fact, seen in the middle of the road or only off to the side of the road, the uncontradicted trial testimony was that Corporal Dale saw a purse, told Officer Watson about it, and directed Officer Watson to retrieve it. Those facts, and the reasonable inferences therefrom that a similarly situated police officer would have drawn, all justified the initial detention of Roten and Dussell.

15. The police may arrest a person without a warrant if they have probable cause to believe that person has committed a misdemeanor or a felony.⁷ Probable cause exists where the facts, in the totality of the circumstances, indicate that there is a fair probability that the individual has committed, or is committing, a crime.⁸

16. Roten contends that the police did not have probable cause to arrest him because (i) they had no reasonable articulable suspicion to justify initially

⁷ 11 *Del. C.* § 1904 (2005); *Thomas v. State*, 467 A.2d 954, 957 n.3 (Del. 1983) (defining "reasonable ground" from the Delaware Code as probable cause).

⁸ *Maxwell v. State*, 624 A.2d 926, 930 (Del. 1993) (citing *Illinois v. Gates*, 462 U.S. 213 (1983); *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)).

detaining him, and (ii) any observations made by the police when looking inside Dussell's car after the detention, did not support a reasonable suspicion that the two men had committed or were committing a crime. Because we have found that the police did have valid grounds to detain the two men, the issue becomes whether the officers' observations made after they approached the Chevrolet were sufficient to enlarge their suspicions into probable cause.

17. The Superior Court held that Corporal Dale's and Officer Asbell's observations of the men and the tools inside their car gave them probable cause to arrest Roten and Dussell. We agree. The Superior Court correctly relied on the following facts of record in determining that there was probable cause: (i) the mens' suspicious presence in the middle of the night with no one else around after a complaint being made that a suspicious person was looking into cars; (ii) their implausible story about looking for girls they had met in Newark; (iii) the presence of the black purse in their driving path; (iv) Corporal Dale's observation that Dussell had a flashlight between his legs, seemed nervous, and that both men were wet and shaking;⁹ and (v) Officer Asbell's having noticed tools in a duffel bag on the floorboard at Roten's feet.¹⁰ Those plain view observations made by officers

⁹ The fact that the men were wet was also important, because although it had been raining earlier that evening, it was not raining at that time. It was reasonable for Corporal Dale to infer that the men had recently been out of the car, in the rain, and not driving around looking for the two women as they stated.

¹⁰ A logical inference was that those tools were burglary tools used to break into cars.

while looking into the car strengthened the officers' already reasonable suspicions that Roten and Dussell had just committed a crime.

18. Because the record demonstrates that the officers had a reasonable articulable suspicion to justify stopping the car, and thereafter had probable cause to make the arrests, the Superior Court committed no abuse of discretion in denying Roten's motion to suppress evidence.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice