

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELWOOD HUNTER,	§	
	§	No. 244, 2007
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. 0608007491
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 27, 2008
Decided: March 10, 2008

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

ORDER

This 10th day of March 2008, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Elwood Hunter (“Hunter”), the defendant-below, appeals from a final judgment of conviction entered by the Superior Court. A jury found Hunter guilty of possession with intent to deliver heroin and use of a vehicle for keeping a controlled substance. On appeal, Hunter claims that the Superior Court erred in denying his motion to suppress evidence found during a police search of his person. We affirm.

2. On August 8, 2006, Wilmington Police received information from a past-proven, reliable informant about a heroin delivery that was supposed to occur

that evening. The informant provided police with a description of the man who went by the nickname “Sticky.” The informant also described Sticky’s vehicle, including that it had North Carolina tags, and indicated the location and approximate time of the heroin delivery. The informant also stated that Sticky sometimes carried a gun.

3. Police set-up surveillance in the area and observed a vehicle matching the informant’s description (which included North Carolina tags) pull onto the 1200 block of West 6th Street and park. After two or three minutes during which the officers noticed no activity, the police decided to stop the vehicle. The occupants were later identified as Hunter (the driver) and Mohammed Carney (the passenger).

4. Wilmington Police Detective Randolph Pfaff (“Pfaff”) arrived on the scene immediately after Hunter was stopped and conducted a pat-down of Hunter. In Hunter’s left front pants pocket, Detective Pfaff felt a bulge, which he “recognized to be what’s considered bundles of heroin.”¹ After feeling the bulge, Detective Pfaff continued the pat-down to “make sure [Hunter] had no guns on him,” and asked Hunter what was in his pocket. Hunter told Detective Pfaff it was money. After completing the pat-down, Detective Pfaff removed the item from

¹ A bundle of heroin is 13 individual bags wrapped together.

Hunter's pocket. The item was a small plastic bag that contained four bundles or fifty-two bags of heroin. Each bundle was individually wrapped.

5. Hunter moved to suppress the evidence seized during the pat-down. At the suppression hearing held on January 5, 2007, Detective Pfaff testified about his experience in the Wilmington Drug Unit, and specifically about investigations involving heroin in which he participated. Detective Pfaff testified that, based on his experience, he knew during the initial pat-down that what he had felt were bundles of heroin. In response to why Detective Pfaff asked Hunter what was in his pocket if he already knew what the bulge was, Detective Pfaff replied, "I wanted to ask him."²

6. During the suppression hearing, Hunter testified that he was handcuffed before Detective Pfaff patted him down, and that there were "approximately three pat-downs." Hunter testified that Detective Pfaff was taking things out of his pockets before asking him what they were—such as his ID, keys, a box-cutter knife, and the bag containing heroin. Hunter denied that Detective Pfaff ever asked him what was in his pocket, and denied that he told Detective Pfaff that it was money.

² Detective Daniel Silva, who also testified at the hearing, stated that Detective Pfaff asked Hunter what was in his left pocket and Hunter told him "money."

7. At the conclusion of the hearing, Hunter's suppression motion was denied. The Superior Court concluded that, under the totality of the circumstances, the police had sufficient reason to stop Hunter, conduct a pat-down, and, based on the "plain touch" doctrine, seize the heroin from Hunter's pocket.³ This appeal followed.

8. The issue on appeal is whether the Superior Court erred in denying Hunter's motion to suppress the evidence seized during the search of his person. Hunter's sole claim is that the denial was erroneous because the evidence seized was not properly removed under the "plain touch" exception.⁴

9. The Superior Court's denial of a motion to suppress after an evidentiary hearing is reviewed for abuse of discretion.⁵ This Court is deferential to the Superior Court's findings of fact, and, once the historical facts are properly established, "the issue is whether an undisputed rule of law is or is not violated."⁶

³ The Superior Court judge stated: "The contraband was in plain touch. The police officer had sufficient experience to understand what the bundle of heroin feels like and the number of bags that are usually bundled together."

⁴ On appeal, Hunter is not challenging the pat-down, but claims that the pat-down, as conducted, exceeded the permissible scope of the search.

⁵ See *Harris v. State*, 2005 WL 2219212, at *1 (Del. Supr.).

⁶ *Id.* (citations omitted).

Therefore, Hunter's claim, to the extent that it implicates his constitutional right to be protected from unreasonable searches and seizures, will be reviewed *de novo*.⁷

10. Under the "plain touch" exception, "a police officer may seize non-threatening contraband detected during a pat-down search if the identity of that contraband is immediately apparent from plain sight or plain touch."⁸ Detective Pfaff testified that during his initial pat-down he recognized the bulge in Hunter's pocket as bundles of heroin, and that he was able to identify the bundles based on his years of experience and familiarity with the specific way heroin is packaged.⁹ Detective Pfaff testified that he had worked for the Wilmington Drug Unit for approximately five and a half years, and that he had been involved in many investigations dealing with heroin. He explained that:

[A] bundle of heroin would be like a small pack of gum, probably an inch and a half by maybe a third to a half inch thick, then they are banded with a black rubber band.... It's double-banded like that, so besides the square bulge, it also has the little rubber band going around it.

⁷ *Id.*

⁸ *Mosley v. State*, 2000 WL 275574, at *1 (Del. Supr.) (citing *Minnesota v. Dickerson*, 508 U.S. 366, 376-77 (1993)).

⁹ *See Hubbard v. State*, 2001 WL 1089664, at *5 (Del. Supr.) (holding that the seizure of contraband did not exceed the scope of the search under the plain touch exception where the officer testified that he was able to identify an illegal pipe used to smoke crack during a pat-down based on his years of experience); *Mosley*, 2000 WL 275574 at *2 (evaluating an officer's identification of crack cocaine during a pat-down based on her years of experience and knowledge about the packaging of drugs).

11. The trial judge determined that during the initial pat-down Detective Pfaff identified the bulge in Hunter's pocket as heroin, and that his search did not exceed the scope of the plain touch doctrine.¹⁰ Because that conclusion is supported by the evidence, the Superior Court did not abuse its discretion in denying Hunter's motion to suppress.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁰ *Walker v. State*, 1992 WL 115945, at *2 (Del. Supr.) (noting the weight given to the officer's testimony in upholding the decision of the Superior Court to deny defendant's motion to suppress).