IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| JEFFREY L. BRADLEY, | § | |
| | § | No. 121, 2009 |
| 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. 0807022780 |
| | § | |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: July 22, 2009
Decided: July 27, 2009

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

**O R D E R**

This 27th day of July 2009, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Jeffrey L. Bradley appeals from a Superior Court final judgment of conviction of Trafficking in Cocaine. Bradley claims that the Superior Court erroneously denied his motion to suppress drug evidence, because the police stopped him without a reasonable and articulable suspicion that he was engaging in criminal activity. We find that the Superior Court erroneously denied Bradley's motion to suppress. Because the principal evidence against Bradley was the fruit of an illegal seizure, we reverse the judgment of the Superior Court.

2. Shortly after midnight on July 19, 2008, Officer Mark Murdock of the Wilmington Police Department was on routine patrol—in a marked police car—in Wilmington's 14th District. As Officer Murdock drove up the 300 block of West 30th Street, he saw three to five young men standing on the corner of 30th and Jefferson Streets. He also saw a red Lexus parked on the 400 block of West 30th Street, a half block away. Officer Murdock specifically noticed the Lexus, because its engine was running and its lights were off.

3. Officer Murdock continued slowly up the dimly lit 400 block of West 30th Street and made eye contact with Bradley, who was in the driver's seat of the Lexus. Bradley "shrugged down" in his seat, but did not try to hide from Murdock. Officer Murdock continued driving up the street, and decided to circle back around, to the 300 block of West 30th Street. Five minutes later, he approached the men standing at the corner of West 30th and Jefferson Streets, and asked if they lived in the house they were standing in front of. The men replied that they did not. Officer Murdock asked them to disperse, and waited a few moments to observe the men comply before he continued up West 30th Street.

4. As Officer Murdock entered the 400 block of West 30th Street, he observed that the red Lexus had not moved, its engine was still on, and its lights were still off. Officer Murdock activated his emergency lights, pulled up five feet behind the red Lexus, and focused his spotlight on that car. Murdock observed that

Bradley was "scrunched down" in his seat, but saw no other movement in the car. Officer Murdock then approached Bradley and asked him for his license and registration. Bradley replied that he had no identification and that he had borrowed the car.

5. Officer Murdock ordered Bradley out of the car. After Bradley got out, Officer Murdock noticed that he was clenching something in his fist. Murdock ordered Bradley to open his fist several times, but instead Bradley lifted his fist to his mouth. A struggle between Officer Murdock and Bradley ensued. Bradley removed the item from his mouth and threw it under the car, after which Officer Murdock handcuffed Bradley and recovered a small bag from underneath the car. Officer Murdock looked in the bag and saw a white powdery substance, which subsequent laboratory testing confirmed to be approximately 30 grams of crack cocaine.

6. On August 4, 2008, Bradley was indicted for Trafficking in Cocaine, Possession with Intent to Deliver Cocaine, and Unauthorized Use of a Motor Vehicle. On November 25, 2008, Bradley moved to suppress, claiming that Officer Murdock lacked a reasonable articulable suspicion to stop him, and that therefore, the drug evidence was the fruit of an illegal search.

7. The Superior Court held a suppression hearing on February 11, 2009. At the suppression hearing, Officer Murdock testified that: (i) he had nearly four

years of experience as a police officer; (ii) the 400 block of West 30th Street was an "open air drug market;" (iii) he had personally made drug arrests in the area; (iv) several youths were loitering a half block away; (v) he considered suspicious the fact that the car was parked in front of a dimly lit vacant home with the engine running; and (vi) he observed no criminal or drug-related activity around the car.

8. After considering counsels' arguments, the Superior Court orally denied the motion to suppress. The motion judge reasoned that Officer Murdock did not "seize" Bradley, but even if he had, the seizure was based on a reasonable and articulable suspicion.

9. On February 24, 2009, Bradley and the State agreed to a bench trial based solely on stipulated evidence (reports confirming the amount and nature of the seized drugs, and Officer Murdock's testimony). The State entered a *nolle prosequi* on the charges of Possession with Intent to Deliver and Unauthorized Use of a Motor Vehicle. The trial judge convicted Bradley based on the stipulated evidence. With the parties' agreement, the trial judge proceeded immediately to sentencing, and imposed a minimum-mandatory sentence of two years at Level 5, followed by eighteen months at Level 3.

10. Bradley moved to reargue the denial of his motion to suppress. On February, 27, 2009 the suppression motion judge denied that motion, reasoning that: (i) there was no such thing as a motion to reargue a suppression decision, and

(ii) the initial denial of the suppression motion was correct. Bradley timely appeals his conviction.

11. The judge who decided suppression motion held that Officer Murdock did not "seize" Bradley, having found that:

> [Officer Murdock] walked up to the car and asked -- now, he did put on his exterior lights on top of the police car. He walked up to the car and asked one question basically. As far as I know or as far as the testimony here would indicate, that he asked for the driver of the car, who happens to be the defendant, to produce license, registration and any identification. [The driver] was unable to produce a license or registration
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> …[the] testimony in this case stopped with what the officer's question was and what Mr. Bradley's answer was to the question regarding identification, ownership and the licensure, whatever of the car. But up to that point, either Mr. Bradley was not detained under our law, as the officer's intention may have been to later detain him based on the answers he got or something else like that, but he had not been seized or detained within the meaning of 11 Delaware Code, Section 1902.

The suppression motion judge further found that even if Officer Murdock had "seized" Bradley, the seizure was based on a reasonable and articulable suspicion, because:

> …the car's location, the engine running on a summer night, no lights on, no -- high drug area in a dimly-lit neighborhood… this officer is particularly familiar with this block. He has patrolled this area … for three years as a patrol officer. So it's a whole area that he's particularly familiar with in terms of what is more likely to be high drug activity area and what is not.

12. On appeal, Bradley claims that Officer Murdock lacked a reasonable and articulable suspicion that he (Bradley) was involved in any criminal activity, for two reasons. First, Bradley claims that the Superior Court erroneously ruled that Officer Murdock did not seize him, because Murdock had activated the emergency lights on his police car and no reasonable person would feel free to leave under those circumstances. Second, Bradley argues that the State was required—but failed—to establish that Murdock stopped him for any reason other than the high crime character of the neighborhood.

13. The State responds that the Superior Court properly denied suppression, because under the totality of the circumstances—the late hour, the bad character of the neighborhood, and the fact that Bradley was sitting alone in an idling car in front of a dimly lit vacant home—Officer Murdock had reason to suspect that Bradley was present for a purpose related to illegal drugs. Therefore, Murdock had a basis to make an investigatory stop. The State concedes that Bradley was seized when Officer Murdock activated the emergency lights on his police car. Bradley rejoins that Officer Murdock testified only that he found Bradley's presence suspicious, but Murdock never testified (or implied) that he suspected Bradley of having a drug related purpose by his presence in the area.

14. The Superior Court reasoned that Officer Murdock had a reasonable and articulable suspicion to stop Bradley, because Bradley's car was parked in a

high crime neighborhood, late at night, with the engine running and the lights off, in front of a dimly lit vacant home. The sole issue is whether Officer Murdock had a legally permissible basis to detain Bradley for questioning. We conclude that he did not.

15. On appeal from the denial of a motion to suppress evidence, we review the trial court's legal conclusions *de novo*, and its factual findings for abuse of discretion.[1] Bradley appeals only the Superior Court's legal rulings.

16. The Fourth Amendment to the U.S. Constitution and Article I, Section 6 of the Delaware Constitution guarantee the right to be free from unreasonable searches and seizures.[2] Police officers may temporarily detain an individual for investigatory purposes—that is, the police may "seize" or "stop" them—based on a reasonable and articulable suspicion of criminal activity.[3] We determine whether a seizure was reasonable under the totality of the circumstances, including the "inferences and deductions that a trained officer could make which might well elude an untrained person."[4] To support a reasonable and articulable suspicion of criminal activity "the totality of the circumstances [must] indicate[] that the

[1] *See Lopez-Vasquez v. State*, 956 A.2d 1280, 1284-85 (Del. 2008).

[2] *See Jones v. State*, 745 A.2d 856, 860-61 (Del. 1999); *see also* U.S. CONST. amend IV, DEL. CONST. Art I, § 6. Here, Bradley does not argue that the federal and state constitutions provide different levels of protection. Therefore, we need not separately analyze those two constitutional provisions.

[3] *Id.* at 861 (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

[4] *See Lopez-Vasquez*, 956 A.2d at 1286-87 (internal citation and quotation omitted).

[detaining] officer had a particularized and objective basis for suspecting legal wrongdoing."[5] The State bears the burden of proving that a warrantless search had a particularized and objective basis.[6] Under the exclusionary rule, "the State may not use as evidence the fruits of a search incident to an illegal [seizure]."[7]

17. A defendant's presence in a high crime area late at night is a not a particularized basis to suspect wrongdoing, because a defendant's mere presence does not distinguish him from any other person who is in the area for a lawful purpose.[8] As this Court explained in *Jones v. State*:[9]

> Courts generally use factors such as nighttime and the negative reputation of a neighborhood as additional support to bolster a finding of reasonable suspicion, not as the sole bases [of] that finding. Reasonable and articulable suspicion cannot be based on a defendant's presence in a particular neighborhood at a particular time of day with no independent evidence that the defendant has committed, is committing or is about to commit a crime.[10]

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[5] *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008) (citing *United States v. Arvizu*, 534 U.S. 266, 273 (2002)) (internal quotations omitted). Although the search in *Sierra* was a probationary search (which required reasonable suspicion), *Sierra* applied the "particularized" reasonable suspicion standard from *Arvizu*, a temporary investigatory detention case.

[6] *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001) (explaining that the State bears the burden of proving that a warrantless search complies with the Fourth Amendment).

[7] *Jones*, 745 A.2d at 873.

[8] *See, e.g., Brown v. Texas*, 443 U.S. 47, 51-52 (1979) ("[T]he Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of *the particular individual*…. The fact that [the defendant] was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the [defendant's] activity was no different from the activity of other pedestrians in that neighborhood.") (emphasis added).

[9] 745 A.2d 856 (Del. 1999).

[10] *Jones*, 745 A.2d at 871.

18. The question thus becomes whether there are other independent facts that, when considered together with Bradley's presence in a high crime neighborhood, would establish a reasonable and articulable suspicion that Bradley was engaged in criminal activity. We conclude that the record does not disclose any such independent facts.

19. At the suppression hearing Officer Murdock testified that: (i) he had nearly four years of experience as a police officer; (ii) the 400 block of West 30th Street was an "open air drug market;" (iii) he had personally made drug arrests in the area; (iv) several youths were loitering a half block away; (v) he considered suspicious the fact that the car was parked in front of a dimly lit vacant home with the engine running and lights off; and (vi) he observed no criminal or drug-related activity around the car. The first three items are not particularized; they establish only the officer's experience and general knowledge of the area. Officer Murdock did not testify that he believed the loitering youths were connected to Bradley, and the Superior Court specifically found that they were not. Therefore, the only particularized fact upon which Officer Murdock could have relied was Bradley's presence in an idling car, with its lights off, parked in front of a dimly lit vacant house.

20. Although those facts may support a "hunch," they are insufficient to establish a reasonable and articulable suspicion. In *People v. Freeman*,[11] the Michigan Supreme Court addressed similar facts: police officers became suspicious of a car idling in a deserted parking lot with only its parking lights on, near a darkened house, at 12:30 a.m.[12] The officers approached the driver, and asked him to get out of the car and produce his license and registration. The driver exited the car, and showed the officers his license and a recent bill of sale for the car. Because the bill of sale did not include (as required) the Vehicle Identification Number ("VIN"), an officer shined a flashlight into the car to ascertain the VIN and observed an open beer bottle on the floor.[13] The officer opened the car door to take the bottle and then observed an illegally concealed handgun.[14] The trial court denied Freeman's motion to suppress the gun, and Freeman was convicted of illegally carrying a pistol in an automobile.[15] Reversing the conviction, the *Freeman* Court reasoned that:

> [a] lone automobile idling in a darkened parking lot late at night does not, without more, support a reasonable suspicion of criminal activity. People may temporarily stop their automobiles in such locations for a

[11] 320 N.W.2d 878 (Mich. 1982).

[12] *Id.* at 879.

[13] *Id.*

[14] *Id.*

[15] *Id.*

> variety of reasons: to rest, to check directions, to rendezvous with others, to converse, etc.[16]

The Michigan court specifically emphasized that "the only testimony offered in support of the stop was that the situation 'looked suspicious.'"[17]

21. The facts here are indistinguishable from *Freeman*. Although the State claims that "Officer Murdock determined that [Bradley] was there for an illegal purpose having to do with drugs," that contention finds no support in Officer Murdock's testimony. Murdock testified that he stopped Bradley because:

> [t]hat activity of still being there after a while, the lights being out, the vehicle running on that side of the block in front of a vacant home looked suspicious to me. So I pulled up behind it, turned my emergency lights on and proceeded to exit my vehicle.

Officer Murdock did not draw any connection between Bradley's presence in a car idling in front of a vacant house and drug related activity—even after being asked directly if he had seen any indication of criminal or drug related activity. Officer Murdock's belief that the red Lexus was suspicious was simply a hunch, because Murdock did not observe any criminal behavior, or testify that Bradley's behavior led him reasonably to infer that Bradley had a criminal or drug related purpose in the area. The Superior Court therefore erroneously denied Bradley's suppression motion. Bradley's conviction must therefore be reversed, because without the

[16] *Id.* at 880-81. The Court determined that Freeman was "seized" when the officers asked him to exit his car.

[17] *Id.* at 880.

fruits of this illegal seizure (the seized drugs and laboratory report), there was no factual basis to convict Bradley of Trafficking in Cocaine.[18]

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice

[18] *Jones v. State*, 745 A.2d 856, 873 ("the State may not use as evidence the fruits of a search incident to an illegal arrest.").