

IN THE SUPREME COURT OF THE STATE OF DELAWARE

NORMAN INGRAM)
) No. 617, 2003
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for Kent County
)
 STATE OF DELAWARE,) Cr. ID # 0305008270
)
 Plaintiff Below,)
 Appellee.)

Submitted: June 8, 2004
Decided: September 17, 2004

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

ORDER

This 17th day of September 2004, on consideration of the briefs of the parties, it appears to the Court that:

1. Norman Ingram appeals his conviction in the Superior Court of a variety of drug charges, claiming the trial judge erred by denying his motion to suppress evidence and that there was insufficient evidence to support his conviction for possession with intent to deliver cocaine. Because we find that Ingram's arrest was supported by independent facts justifying the police officer's conduct, we conclude that the trial judge acted within his discretion by denying the motion to suppress. Furthermore, because we find the testimonial and other credible evidence in combination support Ingram's possession with intent to

deliver charge, we hold that the State sufficiently established Ingram's intent to deliver cocaine. Accordingly, we affirm.

2. In May 2003, Officers Mentino DiSilvestro and Brian Talley, members of the Governor's Task Force, stopped Ingram's vehicle near Dover for failing to signal a left turn. DiSilvestro noticed a "faint odor" of alcohol, and that Ingram spoke with a low mumbled voice. After determining he had a valid license and no outstanding warrants, DiSilvestro asked Ingram to step out of the vehicle to perform field sobriety tests. Citing officer safety reasons, DiSilvestro first performed a pat-down search, which revealed neither contraband nor any weapons. As DiSilvestro began to administer the field tests, he observed two small plastic baggies protruding from Ingram's pocket.

3. Separately, Talley, who intended to on conduct a pat-down search, asked Ingram's passenger, Thomas Cabbage, to step out of the vehicle. Talley discovered cocaine in Cabbage's pocket. After learning that Talley had seized Cabbage's cocaine, DiSilvestro suspected that the plastic bags in Ingram's pocket were drug paraphernalia and arrested Ingram. During a later, more thorough search at the police station, officers seized a small bag of marijuana and two bags of crack cocaine from Ingram's person. The larger bag of cocaine weighed slightly over twenty-five grams. Under the driver's seat of Ingram's car, the officers, in a

separate search, discovered a digital scale containing cocaine residue, as well as a roll of toilet paper in the rear of the hatchback.

4. Shortly before trial in December 2003, Ingram moved to suppress the evidence found on his person and in his car. After conducting a suppression hearing, the trial judge denied Ingram's motion. Following a bench trial, the judge convicted Ingram of several drug-related charges, including Trafficking in Cocaine and Possession with Intent to Deliver Cocaine.¹

5. On appeal, Ingram challenges the constitutionality of his arrest, contending that the trial judge erred by denying his motion to suppress evidence and that insufficient evidence exists in the record to support his possession with intent to deliver conviction. We review a trial judge's denial of a motion to suppress evidence for abuse of discretion.² Our review for insufficient evidence requires that we determine whether, viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt.³

6. Ingram does not contest the legality of the initial stop. Instead, he argues the officers had neither a reasonable suspicion nor probable cause to remove him and his passenger from the vehicle and search them. He insists the

¹ *State v. Ingram*, Del. Super., I.D. No. 0305008270 (Dec. 2, 2003).

² *Purnell v. State*, 832 A.2d 714, 719 (Del. 2003).

³ *Bialach v. State*, 744 A.2d 983, 984 (Del. 2000) citing *Davis v. State*, 453 A.2d 802.803 (Del. 1982).

purpose of the original stop had concluded, and that under *Caldwell v. State*,⁴ the Cabbage search constituted an additional investigation unsupported by independent facts justifying the officers' conduct. The Cabbage search was significant, Ingram argues, because DiSilvestro used the seizure from Cabbage as the basis for Ingram's arrest. Thus, Ingram contends, his arrest was constitutionally impermissible and the evidence was seized illegally.⁵

7. Based on the testimony at the suppression hearing, the trial judge concluded the traffic stop was lawful.⁶ He found that the odor of alcohol and the perception of muffled speech justified the officer asking Ingram to step out of the vehicle for a field sobriety test. He also found that the officer had probable cause to arrest Ingram for drug paraphernalia after seeing the protruding plastic bags and learning that Ingram's passenger possessed cocaine. The trial judge concluded:

Since the plastic baggies were observed by the officer in plain view sticking out of the defendant's pocket while the officer was lawfully investigating his DUI suspicion, seizure of the baggies was lawful. As a result of the defendant's lawful arrest, [the] subsequent search of his person and the vehicle were lawful.⁷

⁴ 780 A.2d 1037 (Del. 2001).

⁵ Ingram does not, and cannot, contest the constitutionality of the Cabbage search. *See, e.g., Jones v. United States*, 362 U.S. 257, 261 (1960) (disallowing Fourth Amendment standing to those who "claim[] prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else."), *overruled on other grounds by United States v. Salvucci*, 448 U.S. 83 (U.S. 1980). Instead, Ingram's claim focuses on the officers' decision to arrest him only after discovering that Cabbage possessed cocaine.

⁶ Tr. Mot. to Suppress, at 3-6.

⁷ *Id.* at 6.

The trial judge then denied Ingram's motion and proceeded to trial.

8. On observing a motor vehicle violation, police officers may stop the car and order both driver and passenger out of the vehicle.⁸ Moreover, officers are permitted to conduct a pat-down search of all occupants for safety reasons.⁹ DiSilvestro smelled alcohol when he approached Ingram's vehicle and was conducting a lawful DUI investigation when he observed, in plain view, the suspicious plastic baggies. Once the officers learned that Cabbage possessed cocaine, that fact, plus Talley's observation of the plastic bags in plain view, constituted probable cause to arrest Ingram.

9. In *Caldwell*, we held that in the absence of supporting independent facts, the duration and intrusiveness of an officer's conduct must be reasonably related to the justification for the initial traffic stop.¹⁰ Contrary to Ingram's assertions, *Caldwell* is inapposite because the totality of circumstances here justify the duration and intrusiveness of the traffic stop in this case. The DUI investigation was reasonably related to the initial purpose of the stop, and Cabbage's cocaine possession was an independent fact that justified Ingram's

⁸ See *Maryland v. Wilson*, 519 U.S. 408, 412-14 (1997).

⁹ *Terry v. Ohio*, 392 U.S. 1 (1968).

¹⁰ See *Caldwell*, 780 A.2d at 1050-51 ("In the circumstances of this case, we conclude that the duration and intrusiveness of the traffic stop were not reasonably related to the justification for the [parking violation] stop . . . and were not supported by independent facts justifying the officer's conduct.")

arrest.¹¹ Accordingly, we conclude the trial judge acted appropriately within his discretion when he denied Ingram's motion to suppress the drugs.

10. Ingram also asserts that the State failed to establish his intent to deliver the cocaine. We have held that "possession, quantity[,] and packaging of drugs are not necessarily sufficient, standing alone, to prove intent to deliver."¹² Intent to deliver, however, may be proven through "expert testimony, an admission by the defendant, or some other credible evidence."¹³

11. The State attempted to establish Ingram's intent to deliver through the testimony of Talley, an experienced narcotics officer. Ingram maintains, however, that Talley's testimony was insufficient to establish intent to deliver. He claims that Talley focused primarily on the quantity of drugs seized, a characteristic legally insufficient to establish intent independently under our holding in *Cline v. State*.¹⁴

12. Talley testified that "the amount of drugs and the location, mostly the amount, is more than personal use," leading him to conclude that "the drugs were

¹¹ *Id.*

¹² *Cline v. State*, 720 A.2d 891, 892 (Del. 1998).

¹³ *Id.* at 893.

¹⁴ *Id.*; see also *Corey Caldwell v. State*, 770 A.2d 522, 535 (Del. 2001) ("The State cannot establish intent to deliver merely by proving possession of a particular quantity of cocaine, but [it] may establish intent to sell exclusively through circumstantial evidence.") (quotation marks omitted).

used for delivery or trafficking.”¹⁵ Ingram also points to Talley’s admission during cross-examination that he (Talley) did not know how the drugs were packaged in this case. Despite any deficiencies in the testimony, however, the other credible evidence presented was sufficient to convict Ingram. The quantity of cocaine, over twenty-seven grams; the digital scale containing cocaine residue, found under the driver’s seat of Ingram’s vehicle; the partially used roll of toilet paper found in the rear area, often used for packaging cocaine; and the \$1,000 cash seized from Ingram at the time of his arrest all supported an intent to deliver the cocaine. Furthermore, Ingram’s passenger had a small amount of cocaine wrapped in tissue in his pocket, circumstantial evidence of a recent delivery. Accordingly, sufficient testimonial and other credible evidence supported Ingram’s possession with intent to deliver conviction.

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

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁵ Trial Tr. at 70.