

IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD HARRIS,	§	
	§	No. 557, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware, in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE,	§	No. 0402010364A
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 7, 2005
Decided: August 15, 2005

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

ORDER

This 15th day of August 2005, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Reginald Harris, appeals from his convictions on various drug and weapons offenses following a jury trial in the Superior Court. Harris takes issue with two rulings made by the Superior Court that denied his motion to suppress and motion for a mistrial. We conclude that the Superior Court did not commit legal error or abuse its discretion in either of its rulings. Accordingly, we affirm.

(2) Harris' arrest and subsequent convictions stem from the police finding a firearm, drugs and drug paraphernalia on his person after being dispatched to investigate a shooting. Officers of the Wilmington Police Department were called to a residence located in Wilmington, Delaware in response to gunshots being fired. When the officers arrived, Harris was sitting behind the wheel of a red Suzuki Sidekick and was blocked in the middle of the street as a result of the arrival of several marked police vehicles. While investigating the shooting inside the residence, officers on the scene received word from police headquarters that an anonymous caller had advised that the person in the red Suzuki was involved in the shooting and involved in drugs.

(3) The officers subsequently approached Harris and asked him to exit the vehicle. Harris complied. The officers next placed Harris against the rear of his vehicle and ordered him to place his hands on his head. Harris again complied. The officers then asked Harris if he was carrying any dangerous weapons. Harris indicated that he had a firearm in his jacket pocket. The officers retrieved the firearm and arrested Harris for carrying a concealed deadly weapon. The officers further searched Harris' person, finding marijuana, cocaine, \$1,416.00 in cash and a digital scale. Throughout the entire search process, Harris provided complete cooperation.

(4) Harris’ first argument on appeal is that the Superior Court improperly denied his motion to suppress the evidence gathered during the search conducted outside the residence. He argues that the officers did not have a reasonable and articulable suspicion to warrant such a search under the Fourth Amendment of the United States Constitution and Article 1, Section 6 of the Delaware Constitution. The crux of his argument is that because no evidence was ever found to link him in any way to the shooting that initially brought the police to the residence, the information provided by the anonymous caller did not warrant the search and seizure that took place.

(5) Although Harris’ argument raises a constitutional issue, we are deferential to the Superior Court’s findings of fact.¹ We, therefore, review the Superior Court’s denial of a motion to suppress for abuse of discretion.² “If the historical facts are properly established, ‘the issue is whether an undisputed rule of law is or is not violated.’”³ To the extent Harris’ appeal from the denial of his motion to suppress implicates his constitutionally protected right to be free from unreasonable searches and seizures, our review is *de novo*.⁴

¹ *Garvey v. State*, 873 A.2d 291, 298 (Del. 2005) (citing *Lopez v. State*, 861 A.2d 1245, 1248 (Del. 2004); *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001)).

² *Id.* (citing *Purnell v. State*, 832 A.2d 714, 718 (Del. 2003); *Viridin v. State*, 780 A.2d 1024, 1030 (Del. 2001)).

³ *Id.* (citing *Lopez*, 861 A.2d at 1249).

⁴ *Id.* (citing *Banther v. State*, 823 A.2d 467, 486 (Del. 2003)).

(6) In support of his argument Harris cites *Flonnory v. State*⁵ as precedent for an anonymous tip not providing enough reasonable suspicion to detain a defendant. While *Flonnory* held that an anonymous tip providing only readily observable facts cannot serve as the sole basis for conducting a stop, it also stated that determining whether reasonable and articulable suspicion existed for such a stop must incorporate “the totality of the circumstances surrounding the situation ‘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

(7) Applying that test here, the totality of the circumstances suggest the presence of the reasonable and articulable suspicion required for the police to detain Harris and to conduct a *Terry*⁷ search. At the residence, the officers observed bullet holes in the walls as well as cartridges and live rounds on the floor. Because it is illegal to discharge a firearm in the City of Wilmington, it was clear that a crime had taken place. Since the anonymous caller had provided information that Harris was involved in a crime that had already been verified as having just occurred, the officers had a reasonable and articulable

⁵ 805 A.2d 854 (Del. 2001).

⁶ *Id.* at 858 (citing *Woody*, 765 A.2d at 1263).

⁷ *Terry v. Ohio*, 392 U.S. 1 (1968).

suspicion necessary to detain Harris outside of his car for questioning. Because the officers were already investigating the nearby shooting, they also had a basis to conduct a *Terry* search for weapons. Once Harris disclosed that he was in possession of a firearm, the officers could conduct a search of Harris' person and passenger compartments of his vehicle incident to his lawful arrest for carrying a concealed deadly weapon.⁸ Therefore, the Superior Court properly denied Harris' motion to suppress.

(8) Harris' final argument is that the Superior Court improperly denied his motion for a mistrial after the suppression hearing was mentioned during the testimony of one of the investigating officers. Specifically, the officer stated that he "didn't have to testify at the suppression hearing." This response came after he was questioned about whether and when he had reviewed police reports related to this case. Harris claims that this reference to the suppression hearing permitted the jury to improperly speculate as to the evidence possibly suppressed. He maintains that such speculation, when coupled with his election not to testify at trial, unfairly prejudiced the jury against him, thereby violating his Fifth Amendment right against self-incrimination.

⁸ *Chimel v. California*, 395 U.S. 752 (1969).

(9) We generally review the denial of a motion for a mistrial for abuse of discretion.⁹ A mistrial is only proper when a “manifest necessity” arises where the “ends of public justice would otherwise be defeated.”¹⁰ To the extent Harris’ appeal from the denial of his motion for a mistrial implicates his constitutionally protected right against self-incrimination, our review is *de novo* to determine whether an error of law has been committed.¹¹

(10) In the instant case, the officer’s brief mention of the suppression hearing did not reveal what transpired at the hearing, what the hearing was about or the ultimate outcome. The Superior Court was, therefore, correct in denying Harris’ motion for a mistrial.

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

BY THE COURT:

/s/Henry duPont Ridgely
Justice

⁹ *Garvey*, 873 A.2d at 299 (citing *Flowers v. State*, 858 A.2d 328, 332 (Del. 2004); *Taylor v. State*, 827 A.2d 24, 27 (Del. 2003); *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002)).

¹⁰ *Fanning v. Superior Court*, 320 A.2d 343, 345 (Del. 1974) (citing *United States v. Perez*, 22 U.S. 579 (1824)).

¹¹ *Garvey*, 873 A.2d at 298 (citing *Banther*, 823 A.2d at 486).