

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES MONROE,	§	
	§	No. 94, 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. 0405005159
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 25, 2006
Decided: December 4, 2006

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

ORDER

This 4th day of December 2006, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Charles Monroe ("Monroe"), defendant below-appellant, appeals from his convictions of numerous weapons and traffic related charges arising from a traffic stop and a subsequent search for weapons.¹ On appeal, Monroe contends that the Superior Court erroneously denied his motion to suppress evidence and

¹ Defendant was convicted of: possession of a deadly weapon by a prohibited person, in violation of 11 *Del. C.* § 1448, possession of ammunition by a person prohibited, in violation of 11 *Del. C.* § 1448, possession of a weapon in a safe school zone, in violation of 11 *Del. C.* § 1457, carrying a concealed deadly weapon in violation of 11 *Del. C.* § 1442, offensive touching, in violation of 11 *Del. C.* § 610, resisting arrest, in violation of 22 *Del. C.* § 1257, driving an unregistered motor vehicle, in violation of 21 *Del. C.* § 2101, and no proof of insurance, in violation of 21 *Del. C.* § 2118(p).

also committed several legal errors that deprived him of a fair trial. We find no reversible error and affirm.

2. This Court summarizes the facts relevant to his claims as they are set forth in a prior order, as follows:²

On May 6, 2004, Wilmington police officers Robert Fox and Charles Puit were on routine patrol when they observed a vehicle with a handwritten cardboard license plate. The officers ran the tag number and discovered that the registration on the vehicle had expired in March 2003. The officers stopped the vehicle and asked the driver, Monroe, for his license, registration and proof of insurance. Although the license was valid, the registration had expired, and Monroe had no proof of insurance.

In the process of checking his identification, the officers discovered that Monroe had a criminal history that included weapon offenses. Upon returning to Monroe, the officers asked him to leave the vehicle because the vehicle would be impounded due to its expired registration and Monroe's failure to provide proof of insurance. After Monroe got out of the car, the officers asked him if he had any weapons or drugs. Monroe did not answer. Officer Fox then directed Monroe to place his hands on the trunk of the car so that the officers could pat him down for weapons.

During the pat down search, Officer Fox felt something hard in the small of Monroe's back. When asked what it was, Monroe said it was a back brace. The officer lifted Monroe's shirt and saw the handle of a gun inside Monroe's back brace. Monroe then attempted to flee. The officers grabbed Monroe and struggled with him before wrestling him to the ground. Once Monroe was in handcuffs, the officers further searched him, discovered ammunition, and arrested him.

3. Monroe claims that Officers Fox and Puit had no authority to conduct a pat down search incident to conducting an inventory of his vehicle. Because

² *Monroe v. State*, No. 94, 2005 (Order) (Del. Oct. 18, 2005).

Monroe challenges the reasonableness of a search of his person, our review is *de novo*.³

4. Both the Federal and Delaware Constitutions protect an individual from unreasonable searches.⁴ This Court recently reiterated the applicable standard in *Taylor v. State*:

[A] police officer may frisk a person who has been detained if he possesses a reasonable articulable suspicion that the detainee is armed and presently dangerous. The United States Supreme Court has defined reasonable suspicion as the officer's ability to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. In determining whether reasonable articulable suspicion exists, a court must examine the totality of the circumstances surrounding the situation 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. With these principles in mind, we examine whether under the totality of the circumstances, the police possessed a reasonable articulable suspicion to stop and frisk. . . .⁵

5. The search of Monroe's person was not an administrative inventory search or a search incident to arrest, but a *Terry* search which must be premised on officer safety. When determining whether the police had reasonable articulable suspicion to perform a *Terry* search, we look to the totality of the circumstances.

³*Taylor v. State*, 822 A.2d 1052 (Del. 2003).

⁴ U.S. Const. Amend. IV; Del. Const. Art. I, § 6.

⁵ *State v. Henderson*, 892 A.2d 1061, 1064-65 (Del. 2006) (footnotes omitted) (citing *Terry v. Ohio*, 392 U.S. 1, 27, 30 (1968); *United States v. Cortez*, 449 U.S. 417, 418 (1981); *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001); *Jones v. State*, 745 A.2d 856, 861 (Del. 1999); *Quarles v. State*, 697 A.2d 1334, 1337 (Del. 1997)).

6. The State contends that Monroe's expired registration, combined with his prior criminal record, demeanor, and failure to answer a question, amounted to reasonable articulable suspicion to conduct a pat down search.

7. The officers' initial stop of the vehicle was valid, because the vehicle's registration had expired. When the officers ran Monroe's tag number, they discovered that "[h]e had an extensive criminal history, weapons charge."⁶ In addition, the officers were allowed, under *Pennsylvania v. Mimms*,⁷ to ask Monroe to step out of the vehicle while performing a routine stop. Officer Fox testified that Monroe appeared nervous when asked to step out of the vehicle.⁸ At that point, the officers asked Monroe if he had any drugs or weapons, and he failed to respond.⁹ Although Monroe's prior criminal history, by itself, was insufficient to establish reasonable articulable suspicion, that history, combined with Monroe's

⁶ App. to State's Answering Br. at B4.

⁷ 434 U.S. 106, 111 (1977) ("[a]n officer prudently may prefer to ask the driver of the vehicle to step out of the car and off onto the shoulder of the road where the inquiry may be pursued with greater safety to both.").

⁸ "[H]e appeared to be nervous when asked about [weapons and drugs]. His hands appeared to be a little shaky."). App. to State's Answering Br. at B4.

⁹ "We approached the car, asked him to step out of the vehicle, told him he was going to be issued some summonses, if he could come to the rear of the vehicle so we can explain to him what's going on. As we walked to the rear of the vehicle, asked him if he had anything on him that would be a danger to these officers, weapons, drugs, anything. . . ."). *Id.* at B4.

nervous demeanor and refusal to answer the officer's question, was sufficient to establish a reasonable articulable suspicion.¹⁰

8. Monroe further contends that the Superior Court unfairly prevented him from mounting an effective attack on Officer Fox's credibility, by committing three legal errors. We conclude that the Superior Court's rulings are firmly rooted in the trial court's discretion as a matter of trial management.¹¹

9. Monroe first contends that the Superior Court denied him the benefit of witness testimony that could have destroyed the credibility of Officers Fox and Puit. Specifically, Monroe contends that had he been able to produce "Ms. Church," her testimony would have shown that the officers lied during their testimony and may have exonerated him in the eyes of the jury.

10. We disagree. Even if Ms. Church had been subpoenaed, and appeared and testified as Monroe represented she would have, that would not have changed the outcome of the suppression hearing. The Superior Court specifically found that even if Ms. Church testified, her testimony would be irrelevant. The Superior

¹⁰ *Louisiana v. Dumas*, 786 So.2d 80, 82 (La. 2001) ("While we agree with the majority on the Second Circuit panel that an individual's prior felony record does not *alone* provide reasonable grounds either for stopping or searching him, 'an officer's knowledge of a suspect's prior criminal activity in combination with other factors may lead to a reasonable suspicion that the suspect is armed and dangerous.'" (citing *New Jersey v. Valentine*, 636 A.2d 505, 511 (N.J. 1994))).

¹¹ *Smith v. State*, 2005 Del. LEXIS 322, *3 (Del. 2005) (citing *Bailey v. State*, 521 A.2d 1069, 1088 (Del. 1987)).

Court noted that "what Mrs. Church could say isn't going to change anything."¹² Given the Superior Court's focus on the underlying reasons for the *Terry* stop, we conclude there was no abuse of discretion.

11. Monroe next contends that he was deprived of a fair trial, because the Superior Court denied him a copy of the radio communication between the police vehicle of Officers Fox and Puit and central dispatch, and later denied him a copy of the suppression hearing transcripts. We find that the Superior Court did not abuse its discretion in denying both motions to compel production of those documents.

12. With respect to the radio transmission, there is ample evidence showing that the officers' knowledge of Monroe's expired registration would have come from a computerized system, rather than from radio dispatches. Transcripts of the radio dispatches would thus have been, as the Superior Court noted, irrelevant to the underlying issue.

13. Monroe's argument regarding the transcripts of the suppression hearing is similarly unpersuasive. At trial, Monroe attempted to show that Officer Fox had repeatedly committed perjury and that his testimony should not be believed. Monroe contends that by beginning his trial the day after the suppression hearing, the Superior Court denied him his right to a fair trial. Although credibility is often

¹² App. to State's Answering Br. at B12.

times significant in a trial, here the Superior Court did not abuse its discretion for two reasons. First, Monroe did not file a motion for expedited transcription. Second, and more importantly, Monroe has not shown that he was denied a fair trial based upon the unavailability of the transcripts. Indeed, the record shows that Monroe was able to present the substance of his argument through cross-examination of Officer Fox without the aid of a word-by-word transcription from the suppression hearing.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice