

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT WEDDINGTON,)
) No. 428, 2006
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID No. 0602003142
)
 Plaintiff Below,)
 Appellee.)

Submitted: February 12, 2007
Decided: March 14, 2007

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

ORDER

This 14th day of March, 2007 it appears to the Court that:

(1) Appellant Robert Weddington appeals a Superior Court judge's denial of his motion to suppress heroin the State sought to introduce at trial. The police found the heroin in Weddington's back pocket on February 6, 2006. Weddington argues that the Superior Court judge erred during a pretrial suppression hearing when he foreclosed Weddington from fully exploring an inconsistency between the arresting officer's sworn testimony at the Superior Court suppression hearing and facts that same police officer swore to in an affidavit in support of an application for an arrest warrant prepared immediately after the police detained Weddington.

(2) Given proper latitude, Weddington argues, he would have established that the police did not have a reasonable articulable suspicion to detain him and that absent a legal detention, the police seized heroin from Weddington illegally.

(3) After consideration of the record, it appears that defense counsel ably cross examined the arresting officer and highlighted an inconsistency between the police officer's testimony and his sworn affidavit in support of an application for an arrest warrant. Defense counsel presented the trial judge with sufficient information to assess the officer's credibility and the extent to which the alleged inconsistency had a bearing on whether police had a reasonable articulable suspicion to detain Weddington. The Superior Court judge's ruling limiting cross examination simply prevented defense counsel from presenting needless cumulative evidence, consistent with D.R.E. 403. Therefore, we find that the Superior Court judge neither abused his discretion when he limited defense counsel's cross examination nor when he denied Weddington's Motion to Suppress. Accordingly, we AFFIRM.

(4) On February 4, 2006, as a result of reports of drug sales in the area, Detective Taylor of the Wilmington Police Department surveilled the 900 block of North Pine Street. Taylor testified at Weddington's suppression hearing that while conducting the surveillance, he saw Weddington engage in several "hand-to-hand" transactions. During those transactions, Wedding would talk on his cell phone, and

then go into a residence at 906 Pine Street. When Weddington came out of the house, he would meet a person who would hand something to Weddington and receive something from him in return. These observations led Taylor to conclude that Weddington was selling drugs.

(5) After the “hand-to-hand” transactions, a Ford Escort arrived at 906 Pine Street. Weddington got into the car briefly, went back into the house, came out of the house, and got back into the car. The car then drove off. By police radio, Taylor requested that officers stop the Ford Escort. Wilmington Police Officer Paul Ciber, Jr. pulled the car over at the Adams Four Shopping Center. Ciber removed Weddington from the car and asked him “if he was carrying anything.” Weddington admitted that he had three bags of heroin. Ciber then removed the bags from Weddington’s back pocket. After the police took Weddington into custody, Taylor swore to facts surrounding Weddington’s arrest in an affidavit offered in support of an application for a warrant to arrest Weddington.¹

¹ The affidavit in support of an arrest warrant did not include a statement that Taylor observed Weddington’s alleged “hand-to-hand” transactions; however, the affidavit included the other details described above about Weddington’s behavior and the fact that police obtained 3 bags of heroin from his pockets *after* they had stopped him. Justice of the Peace Court issued an arrest warrant based on Taylor’s affidavit. Weddington neither raised an issue about lack of probable cause to issue the arrest warrant in his motion to suppress nor did he allege that the police officers’ failed to follow 10 *Del.C.* § 1902.

(6) The Justice of the Peace Court issued a warrant authorizing Weddington's arrest for possession of heroin in violation of 16 *Del. C.* § 4753² and a grand jury indicted him on that charge on March 20, 2006. On June 23, 2006, the Superior Court held a suppression hearing. Both Taylor and Ciber testified. After the hearing, the Superior Court judge denied Weddington's Motion to suppress, finding that the officers had a reasonable articulable suspicion to detain Weddington and that the police properly seized evidence from his person. On July 27, 2006, a Superior Court judge presided over a bench trial and found Weddington guilty of possession of heroin.

(7) The record clearly shows that the police seized the heroin Weddington sought to suppress from his person after they removed him from the car and after he had admitted that he had heroin on his person. Weddington argues that the "hand-to-hand" transactions about which Taylor testified at the hearing never occurred. He maintains that the Superior Court judge erroneously relied on those transactions for his conclusion that the police had a reasonable articulable

² 16 *Del. C.* § 4753 states:

It is unlawful for any person knowingly or intentionally to possess, use or consume a controlled substance or a counterfeit substance which is a narcotic drug unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice or except as otherwise authorized by this chapter. Any person who violates this section shall be guilty of a class A misdemeanor.

suspicion that he was engaging in criminal activity at the time he was detained. Weddington contends that the trial judge's improper limitation on counsel's cross examination of Taylor prevented Weddington's counsel from exploring fully the inconsistency between Taylor's testimony at the suppression hearing and the facts Taylor swore to in the affidavit he had prepared in support of the application for the arrest warrant. Weddington claims that had he been allowed to explore that inconsistency more expansively, the Superior Court judge would necessarily conclude that Taylor did not see any "hand-to-hand" transactions and, therefore, would not be able to rely on that fact to find that the police had a reasonable articulable suspicion that Weddington possessed drugs at the time they detained him.³

(8) In order to establish probable cause for the issuance of an arrest warrant, Taylor swore to facts in an affidavit he prepared supporting an application for an arrest warrant after police detained Weddington and after they seized heroin from his person; however, the affidavit did not mention the "hand-to-hand transactions" that Taylor had allegedly observed before the detention. Defense counsel sought to highlight this omission in an effort to cast doubt on the truthfulness of Taylor's suppression hearing testimony. If Taylor never observed

³ Neither in the Superior Court nor in this appeal did Weddington claim that he was improperly questioned under the Delaware Constitution, 10 *Del.C.* 1902 or the federal constitution.

“hand-to-hand transactions,” Weddington asserts, then the police lacked a reasonable articulable suspicion that he was engaged in criminal activity before detaining him and asking him “if he was carrying anything.” Defense counsel cross examined both Ciber and Taylor about this omission in the affidavit. In response to counsel’s questions, Taylor testified that he did not include the information regarding the “hand-to-hand transactions” in the affidavit because he did not want to compromise a joint State and federal drug investigation. Weddington’s counsel continued to question Taylor about the omissions⁴ until the trial judge interrupted and stated:

⁴ Specifically, the transcript reads as follows:

Defense counsel: What you put in your report was that you were conducting surveillance, you had received numerous complaints about drug sales taking place in this block; is that right?

Taylor: Yes

Defense counsel: Now, that information, that sentence it did not compromise your federal investigation to put that information in this affidavit; is that right?

Taylor: That’s correct.

Defense counsel: But somehow putting in this affidavit that – you put more information in this affidavit about Robert Weddington, didn’t you?

Taylor: As far as?

Defense counsel: Well, you got his name all throughout this affidavit and what you saw him do as far as being on his cell phone, go inside a house, go inside a car, and things like that; is that right?

Taylor: Correct.

Defense counsel: But to say that he [Wedington] was observed doing a hand-to-hand, what you believed to be a drug transaction, that would compromise a federal investigation to put that fact in this affidavit, you're saying?

Taylor: Specifically, possibly, yes.

Defense counsel: In what regard – I don't follow that all logically, so tell me, fill it out for me.

Taylor: Well, any of those individuals that he may have dealt with that day could have possibly [been] relevant to a federal investigation.

* * *

Defense counsel: And you didn't include any fact about him being observed doing drug sales in the affidavit?

Taylor: No, I didn't

Defense counsel: You made no account in here on the number of transfers you saw him do, allegedly, right?

Taylor: No.

* * *

Defense counsel: Him talking on his cell phone in front of his house, there's nothing illegal about that, is there?

Taylor: It depends.

Defense counsel: If you talk on your cell phone in front of your house, is that legal or illegal when you do that?

Taylor: Typically I don't stand in front of my house and talk on the cell phone.

Defense counsel: Folks—if I were to do that in front of my house, is that legal or illegal?

Taylor: It depends on where you live.

Defense counsel: And you're going to suspect me of doing something illegal by standing in front of my house and talking on the cell phone?

Taylor: It depends on what I've seen prior to you talking on the cell phone. It's all one unit here. What I see him do prior to him talking on the cell phone, and

Wait. Stop. Stop. Can we try – let me try to focus this. I mean, this is a great discovery tool, and you can let this guy talk, he’s going to talk. The only thing that’s really critical that I can see is what he told the officers that required them to make the stop.

Now you can ask him what he observed, and all of that, but it’s not relevant to anything, because it’s only relevant to what he told that [sic] officers that can justify the stop. Right? That [sic] the reasonable articulable suspicion.

Defense counsel resumed Taylor’s cross examination and the State objected. The trial judge sustained the State’s objection by stating:

[Taylor] didn’t put it in the affidavit, he says, because of a federal investigation, I think [defense counsel has] explored how credible that is. . . . I’m not sure there’s benefit to keep going over it. So I’ll sustain the State’s objection. I obviously have a picture of that.

(9) We review the trial judge’s denial of Weddington’s motion to suppress for abuse of discretion.⁵ At the suppression hearing “both the State and the defendant should be afforded the opportunity to present evidence

then once he talks on the cell phone an individual pulls up, the 900 block of Pine Street is probably one of the highest blocks in the City of Wilmington for heroin sales, as well as crack cocaine sales. It’s common practice for individuals now, who have gotten smarter, to instead of just pulling up on the block and doing a sale, to call somebody on the phone and have them meet at a certain location. Whether it’s, you know, the corner of 9th and Pine, down the street, it’s very typical for individuals who are engaging in spreading the poison in the City of Wilmington to use cell phones as a means of distribution.

Defense counsel: So you’re acting as [though] people in that neighborhood have less rights than – [The trial judge then intervened as indicated above].

⁵ *Henderson v. State*, 892 A.2d 1061, 1065 (Del. 2006); *see Younger v. State*, 496 A.2d 546, 549 (Del. 1985); *see Mercedes-Benz of N. Am. V. Norman Gershman’s Things to Wear, Inc.*, 596 A.2d 1358 (Del. 1991) (Determination of relevancy under D.R.E. 401 and unfair prejudice under D.R.E. 403 are matters within the sound discretion of the trial court, and will not be reversed in the absence of clear abuse of discretion.).

and to examine and cross-examine witnesses.”⁶ Suppression motions often require the trial judge to assess the credibility of witnesses.⁷ Trial judges, however, may exercise broad discretion in the course of regulating the presentation of evidence in a suppression hearing.⁸ They may exclude relevant evidence if the admission of the otherwise relevant evidence would result in “undue delay, waste of time or needless presentation of cumulative evidence.”⁹

(10) The record here shows that defense counsel ably highlighted the inconsistency between Taylor’s suppression hearing testimony and the facts sworn to in his affidavit offered in support of the application for an arrest

⁶ *State v. Ehtesham*, 309 S. E. 2d 82, 84 (W. Va. 1983).

⁷ *See Younger*, 496 A.2d at 549. Weddington argues that Younger supports his argument that the trial judge did not properly assess the credibility of the witness. This argument is not persuasive. In *Younger*, two police officers testified at the suppression hearing. The defendant argued that the police coerced his confession, and the officers denied it. The trial judge refused to suppress the statement. This Court acknowledged that a trial judge has broad discretion in assessing witness credibility and in *Younger*, this Court found no abuse of discretion. Here, the trial judge implicitly made a finding of witness credibility. This trial judge was satisfied that the police officers’ testimony was sufficiently credible to support a finding of reasonable suspicion and did not abuse his discretion in so finding.

⁸ *Young*, 431 A.2d at 1254.

⁹ D.R.E. 403. *See also Smith v. State*, 2006 WL 3931082 (Del.) (A trial judge’s decision to prohibit defendant from cross-examining a State witness about the witness’s statements regarding the witness’s gun ownership was supported by an orderly and logical deductive process, was not clearly erroneous, and was well within the judge’s discretion to admit or exclude evidence; the judge reasoned that the evidence that defendant wanted to introduce simply did not contradict the witness’s statement, and the trial judge did not want to conduct a trial within a trial.).

warrant. Defense counsel presented the Superior Court judge with sufficient facts to allow him to assess Taylor's credibility. The judge's evidentiary ruling did not prevent defense counsel from fully exploring the inconsistency between the facts Taylor presented at the suppression hearing and the facts Taylor swore to in the affidavit he prepared to establish probable cause for an arrest warrant. The Superior Court judge correctly concluded that defense counsel put the inconsistency squarely in issue, the judge fairly resolved the inconsistency and the limitation placed on further cross examination was well within the scope of the judge's broad discretion under D.R.E. 403.

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

BY THE COURT

/s/ Myron T. Steele
Chief Justice