EFiled: Nov 06 2015 05:44PM EST
Filing ID 58130368
Case Number 335,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAUWAUN SMITH, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)))))))))))	No. 335, 2015

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

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DATED: November 6, 2015

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I. THE DEFENDANT'S SEIZURE WAS NOT JUSTIFIED BY PROBABLE CAUSE, REASONABLE SUSPICION, OR OTHER LAWFUL GROUND, AND THE FIREARM FOUND AS A RESULT OF THAT SEIZURE SHOULD HAVE BEEN SUPPRESSED.

In its Answering Brief, the State argues that the Defendant "is only half correct" that the police were investigating a civil traffic offense, but maintains instead that the police were not only investigating a civil traffic offense but also investigating the "crime" of a juvenile curfew violation. Ans. Br. at 7. Its argument not only fails to show that the Defendant is only half-correct, but instead demonstrates that the State is wholly wrong.

The State's argument rests on a flawed supposition – that a juvenile curfew violation is a "crime" under section 233 of the Criminal Code because a "crime" is an act punishable by "imprisonment … fine … or other penal discipline." 11 *Del. C.* § 233. The State simply presumes that a curfew violation is a crime because it might be punishable by fine, imprisonment, or other penal discipline. It is not a "crime" under Delaware law, however. The person with the Defendant who was initially seized by police for a bicycle light violation was sixteen years old, a juvenile. A "juvenile" curfew violation is a delinquency, not a "crime." 10 *Del. C.* § 921. The availability of the material witness statute on which the State relies provides that only a witness to a

"crime" can be taken into custody. 11 *Del. C.* §1910. The Defendant's arrest under this statute was not authorized because the juvenile with him had, at most, been engaged delinquent conduct, not criminal conduct. In addition, the State in its Answering Brief, fails to address that insofar as civil traffic offenses in Delaware, such as riding a bicycle without a light, "[s]ociety does not accept the present definition of crime and criminal record as including minor motor vehicle offenses.")." *Fuller v. State*, 104 A.3d 817, 821 n. 28 (Del. 2014).

In addition, the State fails to recognize that the material witness statute on which it relies first requires, as a measure of reasonableness, that an arresting officer first inquire of a potential witness their name and address, and if satisfactory identification is not available, only the can an officer avail himself of the statute and arrest the defendant. None of this occurred in this case because the Defendant was immediately seized because he was in the company of the juvenile.[1] The material witness statute, inapplicable by its literal terms based on the record, only provided a post-textual justification for the illegal arrest.[2]

[1] An "automatic companion" rule is not recognized as a justification for a seizure in Delaware in the absence of reasonable suspicion that the particular defendant is involved in the commission of a crime. *State v. Henderson*, 892 A.2d 1061 (Del. 2006).

2 In fact, there is nothing in the record to suggest that the Defendant was subpoenaed as a witness to testify against the juvenile in Family Court.

Just as significantly, the State, asserting that the material witness statute only requires that a "crime" be committed, also fails to recognize that the definition of a "crime" that it relies on as defined under Section 233 of the Delaware Criminal Code not only requires that a "crime" be committed, but also requires that the "crime" be "*forbidden by a statute of this State*." 11 *Del. C.* § 233 (a), (b) (emphasis added). As stated in the Answering Brief, the juvenile's curfew violation in this case was a violation of a Middletown municipal ordinance, not a statute of this State. Ans. Br. at 7. Therefore, the material witness statute that the State relies on as justification for the Defendant's arrest fails because it not available as a justification for the arrest of a witness when a "crime … forbidden by a statute of this State," 11 *Del. C.* § 233 (a), (b), has not occurred.

Finally, the State still argues that the juvenile in the Defendant's company committed the "crime" of riding a bicycle without a light at night although it does not address the statutory authority supporting the Defendant's argument that riding a bike at night without a light was not a "crime" because it is now only a "civil traffic offense." Instead, the State relies on *Rickards v. State*,[3] to maintain that "the police are statutorily authorized [to] detain a person suspected of committing a civil traffic violation." Ans. Br. at 10. While

[3] 2011 Del. LEXIS 23.

Rickards is correct, the State does not recognize that it cannot be stretched to apply to the facts here. Unquestionably, *Rickards* authorizes the seizure of a person suspected of committing a civil traffic violation, but it does not authorize the seizure of persons or passengers who did not commit a civil traffic violation, including passengers or companions of the person committing a civil traffic violation. There may be other independent, constitutionally satisfactory reasons for detaining companions or passengers of persons committing a civil traffic violation, but their detention is not legally authorized solely because they are in the company of someone who has committed a civil traffic violation. A civil traffic violation is not a crime and police are not authorized to lock up companions of someone committing a civil traffic violation merely because they are the companions of someone committing a civil traffic violation.

The deprivation of the Defendant's liberty was not authorized under Delaware law because he was not a witness to a crime and should have been free to go. The evidence found as a fruit of that seizure should have been suppressed by the Superior Court.

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's convictions should be reversed.

Respectfully submitted,

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DATED: November 6, 2015