



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

The Defendant was arrested in July 2014, and later indicted for the offenses, *inter alia*, of possession of a firearm by a person prohibited, possession of ammunition by a person prohibited, and carrying a concealed deadly weapon. (A1, 5-6).

He moved for suppression of evidence before trial. A7-18 [D.I. 8] . It was denied by the Superior Court after a hearing. A38-39 [D.I. 12]. The Defendant was convicted of possession of a firearm and ammunition by a person prohibited after a subsequent jury trial, the jury could not reach a verdict on the carrying a concealed deadly weapon charge, which was later *nolle prossed*. A3-4 [D.I. 19].

The Defendant was later sentenced, *inter alia*, to seven years imprisonment at Level 5 suspended after five years imprisonment for two years Level 3 probation on the possession of a firearm by a person prohibited offense, and one year imprisonment at Level 5 suspended for one year at Level 2 probation on the possession of ammunition by a person prohibited offense. [Exhibit B attached to Opening Brief].

A notice of appeal was docketed for the Defendant. This is the Defendant's opening brief on appeal.

SUMMARY OF THE ARGUMENT

1. The seizure of the Defendant was not justified by reasonable suspicion that he was a material witness to another's crime because the traffic violation of riding a bicycle at night without a light is not a crime under Delaware law.

STATEMENT OF FACTS

On July 14, 2014, at around 11 p.m., Officer Matthew Schneider of the Middletown Police Department was patrolling in Middletown Village, a development at the edge of Middletown, when he observed two individuals in the street. One, a juvenile, was riding a bicycle without a lighting device. The other individual, the Defendant, was walking along with him. Officer Schneider had also seen these two individuals riding and walking alongside each other about twenty to thirty minutes earlier about four to five blocks away. He decided to stop them and told the juvenile on the bicycle to stop, which he did. The Defendant, while walking, had meanwhile separated from the juvenile riding the bicycle about twenty seconds earlier. A29-30 (pp. 3-9). Officer Schneider also directed the Defendant to come back over to him and have a seat on the curb. He also asked the Defendant if he had anything on him the officer had to worry about. The Defendant said no and stood up. A31-32 (pp. 13-15). Officer Schneider patted the Defendant down for a weapon and found nothing. After patting the Defendant down, Officer Schneider then saw a handgun lying in the grass behind where the Defendant had been seated. He then searched the Defendant and found a round of ammunition. A32 (pp. 15-18).

- 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.

Question Presented

The question presented is whether the Superior Court abused its discretion by not suppressing evidence obtained as a result of the seizure of the Defendant. The question was preserved by the Defendant’s motion to suppress. (A7-18).

Standard and Scope of Review

The trial court's denial of a motion to suppress evidence is reviewed under an abuse of discretion standard.¹

Merits of Argument

The Defendant was seized because he was in the company of a juvenile who was riding a bicycle at nighttime without a lighting device.² An “automatic companion” rule is not recognized as a justification for a seizure in Delaware in

¹ *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001).

² 21 *Del. C.* § 4198F. A seizure or "stop" occurs when "a reasonable person would have believed he or she was not free to ignore the police presence." *Jones v. State*, 745 A.2d 856, 869 (Del. 1999) (The question of "when a seizure has occurred under Article I, § 6 of the Delaware Constitution requires focusing upon the police officer's actions to determine when a reasonable person would have believed he or she was not free to ignore the police presence").

the absence of reasonable suspicion that the defendant is involved in the commission of a crime.³ The Superior Court did not find that the Defendant's seizure was warranted by probable cause or reasonable suspicion because he was walking alongside a juvenile who was riding a bicycle without a bicycle light, but still denied suppression on the ground that the Defendant was a witness to another person's commission of a crime, specifically that juvenile riding a bicycle at night without a light. Delaware law provides for the reasonable detention of a witness to a crime in order to identify that potential witness for possible, later judicial proceedings.⁴ In this case, the Superior Court found that the Defendant was seized as a matter of Delaware law, but that seizure, which led to the discovery of the firearm, was justified because the Defendant was a witness to the juvenile's crime of riding a bicycle at night without a light. A38-39 (pp. 42-44).⁵

The Superior Court erred because a traffic offense is no longer defined as a crime under Delaware law. Riding a bicycle without a light is now a "civil traffic offense" under Delaware law punishable by fine only, not a

³ *State v. Henderson*, 892 A.2d 1061 (Del. 2006).

⁴ "Whenever a peace officer has reasonable ground to believe that a crime has been committed, the officer may stop any person who the officer has reasonable ground to believe was present thereat and may demand the person's name and address...." 11 *Del. C.* § 1910.

⁵ In a prior decision, this Court ruled a traffic offense was a crime that justified the seizure of a witness to it under 11 *Del. C.* § 1910: *Bailey v. State*, 1991 Del. LEXIS 148, *7 (Del. Apr. 15, 1991) .

crime.⁶ Furthermore, “[i]n certain other contexts, Delaware courts have drawn a distinction between traffic violations and criminal ‘offenses’ ... In that regard, it is relevant that most Americans who have gotten a speeding ticket or some other motor vehicle violation at some point in their adult lives — i.e., most Americans — would not consider themselves to have suffered an adult conviction. They would not consider themselves ‘convicts.’” *Fuller v. State*, 104 A.3d 817, 821 (Del. 2014). The juvenile riding a bicycle at night without a light has not committed a crime under Delaware law. Insofar as the civil traffic offense of riding a bicycle without a light in Delaware, “[s]ociety does not accept the present definition of crime and criminal record as including minor motor vehicle offenses.”).” *Id.*, n.28.

The statutory authority which the State and the Superior Court relied on provides that police officers may seize a possible material witness only when a “crime” has been committed.⁷ However, it may have been characterized in the past, riding a bicycle without a light at night is now a civil traffic offense, not a crime under Delaware law. Consequently, there was no statutory authority permitting the seizure of the Defendant below. The handgun found near the Defendant thereafter constituted “fruit of the poisonous tree” and should have

⁶ 21 *Del. C.* § 801 (civil traffic offenses include “other civil penalties provided for in this title”); *see* 75 *Del. Laws*, c. 204, § 1 (eff. July 21, 2005).

⁷ 11 *Del. C.* § 1910.

been suppressed by the Superior Court. *Wong Sun v. United States*, 371 U.S.
471 (1963).

CONCLUSION

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

Respectfully submitted,

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