IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES L. RICKARDS,	§	
	§	No. 500, 2010
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1002005670
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 15, 2010
Decided: January 12, 2011

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

O R D E R

This 12th day of January 2011, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. James L. Rickards ("Rickards"), the defendant-below, appeals from a Superior Court order denying his motion to suppress, and from his subsequent judgment of conviction of and sentence for driving under the influence of alcohol ("DUI").[1] On appeal, Rickards claims that the trial court erred by denying his suppression motion because the police: (i) lacked a reasonable and articulable suspicion of criminal activity sufficient to stop and detain him in violation of his

[1] 21 *Del. C.* § 4177(a).

rights under the United States and Delaware Constitutions, and (ii) lacked the authority to stop him for a suspected civil traffic violation of 21 *Del. C.* § 4179, because that statute does not authorize the police to make administrative stops.[2]

2. This appeal raises an issue of first impression: may a police officer stop a driver where the officer has a reasonable and articulable suspicion regarding the commission of a *civil* traffic violation? We conclude that 21 *Del. C.* § 802 authorizes such a stop. Because Rickards has failed to raise a claim that Section 802 is unconstitutional under either the United States or the Delaware Constitution, we affirm.

3. At about 7:30 p.m. on January 18, 2010, off-duty Delaware State Police Captain Rodney Layfield was returning home in an unmarked police car. As Captain Layfield turned onto the road where he lived, he saw another car stopped in the travel portion of the roadway, blocking the entrance to his private driveway. When Layfield approached more closely, the other car slowly pulled away. Captain Layfield was unable to see the driver (later identified as Rickards), because Rickards had masked his face by turning away and blocking Layfield's view with his arm.[3]

[2] A violation of 21 *Del. C.* § 4179 is a civil traffic offense. *See* 21 *Del. C.* § 4178.

[3] A similar version of the facts can be found in the Superior Court's opinion denying Rickards' motion to suppress. *See State v. Rickards*, 2 A.3d 147 (Del. Super. Ct. 2010) ("*Rickards I*").

4. Captain Layfield, who had been concerned about excessive dumping and littering that had been taking place on and around his property, immediately suspected that Rickards had been littering. Gathering his police vest and pistol and equipping his talon dash light, Layfield backed his car out of his driveway and followed Rickards. As he passed by his driveway entrance, Captain Layfield scanned the ground for any signs of dumping or littering, but saw none.

5. Captain Layfield followed Rickards down the road to a stop sign. At no point was Rickards speeding or otherwise violating any traffic laws. At the stop sign, Layfield activated his talon dash light and Rickards pulled over to the roadway shoulder. Captain Layfield approached Rickards and asked him for his identification, registration, and insurance documents. During a brief conversation in which Rickards gave Layfield the paperwork, Layfield detected an alcoholic odor emanating from Rickards. Layfield requested additional police backup. After a second officer arrived, the police conducted several field sobriety tests, which Rickards failed. Rickards was subsequently arrested and charged with DUI.

6. On May 11, 2010, Rickards moved to suppress evidence on the grounds that the traffic stop was pretextual under *State v. Heath*,[4] and that 21 *Del. C.* § 4179, the statute that governs parking, stopping, and standing violations, does not

[4] 929 A.2d 390 (Del. Super. Ct. 2006).

authorize the police to conduct a traffic stop.[5] A suppression hearing was held the next day. In denying Rickards' suppression motion, the trial court concluded that the traffic stop was not pretextual, because Captain Layfield's reasons for stopping Rickards (*i.e.*, suspected littering and illegal parking or blocking of a private driveway) were the true and only reasons for the traffic stop.[6] Having so concluded, the trial court declined to address Rickards' *Heath* argument.[7] The trial court also determined that no Fourth Amendment violation had occurred, because 21 *Del. C.* § 802 statutorily authorized the police to make traffic stops for civil traffic violations such as those governed by Section 4179.[8]

7. On July 15, 2010, a trial was held on the DUI charge, and the jury returned a verdict of guilty. Because this was Rickards' fourth DUI-related offense, the trial court immediately sentenced Rickards to five years of Level V incarceration, suspended after six months for eighteen months at Level III probation.[9] This is Rickards' direct appeal.

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[5] *See* 21 *Del. C.* § 4179(a) (making it illegal to park, stand, or stop on a roadway in a travel lane); Section 4179(e)(2) ("No person shall stop, stand or park a vehicle . . . [i]n front of a public or private driveway.").

[6] *Rickards I*, 2 A.3d at 149.

[7] *Id.* at 151.

[8] *Id.* at 151-52. 21 *Del. C.* § 802 states that "[a]ny police officer is authorized to make an administrative stop for purposes of enforcing a civil traffic statute, upon a reasonable and articulable suspicion that a violation of such statute has occurred."

[9] *See* 21 *Del. C.* § 4177(d)(4) (felony DUI provisions for repeat offenders).

8. On appeal, Rickards claims that the Superior Court erred by denying his motion to suppress evidence of the DUI, because that evidence was the product of an unlawful search and seizure in violation of the Fourth Amendment of the United States Constitution, and Article I, Section 6 of the Delaware Constitution. Rickards argues that: (a) the traffic stop was a pretext for conducting an unconstitutional search and seizure; (b) the police lacked a reasonable and articulable suspicion to stop and detain him for dumping or littering; and (c) the police lacked the authority to stop and detain him for parking and blocking Captain Layfield's driveway, because 21 *Del. C.* § 4179 does not authorize a police conducted traffic stop for civil traffic violations.

9. We generally review a trial court's denial of a motion to suppress evidence for abuse of discretion.[10] To the extent that Rickards' claim of error involves questions of law, including an alleged violation of a constitutional right, we review that claim *de novo*.[11]

10. We need not address Rickards "pretextual" or "illegal detainment for dumping/littering" arguments, because we conclude that the police were authorized to stop and detain Rickards based on a suspected civil traffic violation. A violation

[10] *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008).

[11] *Id.* at 1284-85.

of Section 4179 is a civil traffic violation, punishable only by civil penalties.[12] That statute relevantly provides:

> (a) Upon any highway outside of a business or residential district, no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon the roadway. . . .
>
> (e) No person shall stop, stand or park a vehicle . . . in any of the following places: . . . (2) In front of a public or private driveway.[13]

Subsection (b) also provides that:

> Whenever any person authorized to issue a summons under this title finds a vehicle standing upon the highway in violation of subsection (a), (e) or (f) of this section, the authorized person may move such vehicle or require the driver or other person in charge of the vehicle to move same to a position off the highway.[14]

11. Rickards does not dispute that he was in violation of subsections (a) and (e)(2) while illegally parked in the roadway and blocking the entrance to Layfield's private driveway. Rickards contends, however, that Section 4179(b) authorizes the police only to move the illegally-standing vehicle or order the driver to move the vehicle off the roadway. It does not (Rickards claims) authorize the police to conduct an administrative stop for that civil traffic violation. Rickards argues that

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[12] 21 *Del. C.* § 4178 ("Any violation of this subchapter . . . shall be subject to a civil penalty only.").

[13] 21 *Del. C.* § 4179(a), (e)(2).

[14] 21 *Del. C.* § 4179(b). A roadway is a "highway" for purposes of title 21. *See* 21 *Del. C.* § 101(22) (defining "Highway" as "the entire width between boundary lines of every way or place of whatever nature open to the use of the public as a matter of right for purposes of vehicular travel, but does not include a road or driveway upon grounds owned by private persons, colleges, universities or other institutions.").

once he drove away, he was no longer in violation of Section 4179 and the police, therefore, had no authority to stop him. That argument, however, ignores the import of 21 *Del. C.* §§ 801 and 802.

12. Section 802 authorizes a police officer "to make an administrative stop for purposes of enforcing a civil traffic statute, upon a reasonable and articulable suspicion that a violation of such statute has occurred."[15] Section 801 provides that "[t]he provisions of this chapter shall apply to civil penalties created pursuant to §§ 410l(d) and 4802 of this title and to other civil penalties provided for in this title."[16] Section 801, therefore, extends an officer's authority to make administrative stops to any traffic offense punishable by a civil penalty, including a violation of Section 4179.[17]

13. At the time Captain Layfield witnessed Rickards illegally parking on the roadway in front of Layfield's private driveway, he had a reasonable and articulable suspicion that a violation of Section 4179 was occurring. Captain

[15] 21 *Del. C.* § 802.

[16] 21 *Del. C.* § 801.

[17] We need not consider whether Sections 801 and 802 are constitutional under the United States or Delaware Constitutions, because Richards has failed to raise that claim. Regardless, we note that the grant of authority in those sections is consistent with that of federal precedent, and other States have similarly authorized traffic stops for suspected civil traffic violations. *See, e.g.*, *Whren v. United States*, 517 U.S. 806, 813-14 (1996); *State v. Brown*, 694 A.2d 453, 455 (Me. 1997); *Wilson v. Commonwealth*, 37 S.W.3d 745, 749 (Ky. 2001) (adopting *Whren*); *State v. Duncan*, 43 P.3d 513, 517-18 (Wash. 2002) (permitting traffic stops for civil traffic violations, but not general civil violations).

Layfield was, therefore, statutorily authorized to conduct a traffic stop to enforce Rickards' violation of Section 4179. During the stop, Captain Layfield properly asked Rickards for his identification, registration, and insurance documents.

14. It was while receiving that information that Layfield smelled alcohol coming from Rickards. That gave Captain Layfield a reasonable and articulable suspicion that Rickards was intoxicated. In those circumstances, Rickards' subsequent detainment and investigation for driving under the influence was lawful. The trial court properly denied Rickards' suppression motion on this basis.

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

BY THE COURT:

/s/ Jack B. Jacobs
Justice