

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| LATESE C. MOSLEY, | § | |
| | § | |
| | § | No. 451, 1998 |
| Defendant Below, | § | |
| Appellant, | § | |
| | § | Court Below: Superior Court |
| v. | § | of the State of Delaware in and |
| | § | for New Castle County |
| STATE OF DELAWARE | § | |
| | § | |
| Plaintiff Below, | § | Cr. A. No. IN97-04-0471 |
| Appellee. | § | |
| | § | |

Submitted: January 25, 2000
Decided: February 29, 2000

Before **VEASEY**, Chief Justice, **HARTNETT** and **BERGER**, Justices.

ORDER

This 29th day of February 2000, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) On the evening of August 16, 1996, two undercover police officers driving an unmarked police car approached a group of four individuals standing on the 200 block of Delamore Street near Judy Johnson Park in the City of Wilmington. Latese Mosley and Shawn Spence were two of those four individuals. When the undercover officers pulled to the side of the road near the group, Spence left the group, approached the vehicle, spoke with the officers and then returned to the

group. After speaking with the group, Spence walked back to the officers' vehicle and completed a sale of cocaine to the undercover officers.

(2) After leaving the scene, the undercover officers directed their back-up, uniformed officers to move in and identify the four individuals. The uniformed officers detained and frisked all four individuals for weapons. During the pat-down search of Mosley, Officer Santiago noticed a piece of plastic sticking out from Mosley's brassiere. Officer Santiago placed her hand over the area and felt a "rocky substance" that she suspected was crack cocaine. Officer Santiago then seized the object and determined it to be a plastic bag containing what appeared to be crack cocaine. Mosley was then placed under arrest and taken into custody.

(3) At trial, the Superior Court denied Mosley's motion to suppress and she subsequently was convicted of possession of a controlled substance within 300 feet of a park.¹ Mosley now appeals from the Superior Court's ruling that the officers had a reasonable suspicion to detain and frisk her and that probable cause existed to seize the plastic bag from her brassiere.

¹ See 16 *Del. C.* § 4768.

(4) This Court reviews *de novo* the Superior Court’s formulation and application of the law regarding the reasonable and articulable suspicion necessary to detain and search an individual.²

(5) A police officer may conduct a pat-down search of an individual when that officer has a reasonable suspicion that the individual has committed or is about to commit a crime.³ Reasonable and articulable suspicion is determined by an “officer’s ability to ‘point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.’”⁴ Moreover, a police officer may seize non-threatening contraband detected during a pat-down search if the identity of that contraband is immediately apparent from plain sight or plain touch.⁵ The rationale for permitting the seizure of contraband detected during a lawful pat-down search is that the officer commits no further invasion of the suspect’s privacy by seizing contraband that already has been identified.⁶

² See *Jones v. State*, Del. Supr., __A.2d __, No. 115, 1998, 1999 WL 1259008, at *2, Veasey, C.J. (December 16, 1999).

³ See *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968).

⁴ *Jones*, 1999 WL 1259008 at *3 (citations omitted).

⁵ See *Minnesota v. Dickerson*, 508 U.S. 366, 376-77 (1993) (noting that the identity of contraband can be determined by an object’s contour or mass).

⁶ See *id.* at 377.

(6) In this case Officer Santiago had the necessary reasonable suspicion to justify a pat-down search of Mosley. The reasonable suspicion that Mosley had committed or was about to commit a crime was supplied by information Officer Santiago had received over her police radio. Specifically, she learned that undercover officers had just purchased cocaine from one individual in a group of four on the 200 block of Delamore Street and that the seller, after talking with the undercover officers, walked over to the group and then returned to the officers' vehicle and completed the sale. Officer Santiago also received a description of the man who had made the sale to the undercover officers and the genders of the other three individuals in the group. Because Mosley appeared to be part of the group described by the police radio reports, it was reasonable for the officers to infer that she had been a potential participant in the drug sale.

(7) Consequently, based on "the totality of the circumstances 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,"⁷ Officer Santiago had a reasonable suspicion that Mosley had committed or was about to commit a crime.

⁷ *Jones*, 1999 WL 1249008 at *3.

(8) Officer Santiago also had probable cause to seize the plastic bag containing crack cocaine from Mosley's brassiere. During Officer Santiago's pat-down search of Mosley, she noticed a piece of plastic sticking out of Mosley's brassiere. Officer Santiago then placed her hand on the area. In doing so, Officer Santiago felt a "rocky substance . . . which wasn't conducive to breast material." This information, gained through plain sight and plain touch and evaluated in light of Officer Santiago's experience and knowledge regarding the packaging of drugs, as well as the undercover buys, established probable cause to believe that Mosley was concealing illegal drugs in her brassiere. Officer Santiago was entitled, therefore, to seize that object from Mosley's brassiere, and it was properly admitted in evidence.

NOW, THEREFORE, IT IS HEREBY ORDERED that the decision of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice