

"New Jersey Supreme Court Issues Latest 'Investigatory Stop' Ruling"

On December 13, 2012, the Supreme Court of New Jersey determined whether the investigatory stop of Don C. Shaw was constitutional under the Fourth Amendment of the United States Constitution and Article 1, Paragraph 7 of the New Jersey Constitution; and, if it was not, whether discovery of an outstanding parole warrant for Mr. Shaw's arrest would be sufficient intervening circumstance that would break the causal chain between the unlawful detention and the subsequent search.

FACTS:

The State presented testimony establishing that on the evening of June 11, 2008, two teams of law enforcement officers in Atlantic City were participating in Operation Falcon. Operation Falcon was a nationwide initiative conducted by the United States Marshals Service in conjunction with federal, state and local law enforcement in a concerted effort to execute outstanding arrest warrants and apprehend fugitives. On the night in question, Detective Steve Brown of the New Jersey State Police and several other officers, approached an apartment building in search of an individual who was the subject of an outstanding arrest warrant. The officers knew his name, but did not have his picture or any description, other than that he was a black male.

Detective Brown approached the front of the apartment building and saw two men, later identified as defendant and Niam Gardner, exit together from the common doorway. As soon as defendant and Gardner saw police, the two men separated and went in two different direction[s]. Brown approached Mr. Shaw and asked him for his name, but Mr. Shaw refused to

give Detective Brow his name. Detective Brown told defendant he was not free to leave. Brown later testified that he had decided to detain defendant until another team arrived.

After what Brown described as a couple of minutes later, other officers arrived and immediately recognized defendant and Gardner, announcing "that's Don Shaw." Parole officer D'Amico immediately stated that Mr. Shaw was wanted by us [Division of Parole]."

Detective Brown then arrested defendant on the outstanding parole warrant, handcuffed him, and conducted a search of defendant's person incident to the arrest. The search revealed two "bricks" of heroin, packaged in 649 individually-wrapped baggies that had been placed in a plastic grocery store bag. Brown later learned that the fugitive for whom he and the others were searching was someone other than defendant.

CASE HISTORY:

Don Shaw was charged with possession of a controlled dangerous substance among other charges. Mr. Shaw moved to suppress evidence of the drugs. The trial court found that Mr. Shaw had been unreasonably stopped in violation of the Fourth Amendment. However, apply the attenuation doctrine set for in *Brown v. Illinois, 422, U.S. 590 (1975)*, the court declined to suppress the drugs, concluding that the taint from the illegal detention was dissipated due to the parole warrant because the warrant stood as an independent basis for arresting and searching Mr. Shaw. The New Jersey Appellate Court concurred that Mr. Shaw was unlawfully detained, but found that the presence of the warrant did not remove the taint from the unconstitutional stop and, therefore invoked the exclusionary rule and suppressed the drugs.

HOLDING AND DISCUSSION:

The New Jersey Supreme Court granted certification and held that the police did not have a reasonable, articulable suspicion of criminal activity to justify the investigatory detention, which was based on nothing more than a non-particularized racial description of the person sought. Furthermore, the Court held that the parole warrant was not an intervening circumstance that sufficiently purged the taint from the unlawful detention.

Specifically, the Court noted that the essence of the Fourth Amendment is that police may not stop and/or detain someone without particularized suspicion. In the case at bar, a warrantless stop, the State must show that there is an established exception to the warrant requirement. Law enforcement may approach a person in a public arena and ask if he is willing to answer questions, but the person need not answer, and his refusal does not, without more, provide reasonable grounds for the police officer to detain him. A minimally intrusive field inquiry becomes an investigative stop or detention, a seizure under the Fourth Amendment, when a reasonable person believes that he or she is not free to leave. An investigatory stop is permissible if it is based on specific and articulable facts which, combined with rational inferences from those facts, give rise to a reasonable suspicion of criminal activity. Law enforcement hunches or subjective good faith, even if correct in the end, cannot justify an investigatory stop or detention.

In the instant case, Don Shaw walked out of an apartment building just as Detective Brown arrived to execute an arrest warrant. Mr. Shaw being a black male was the only descriptive feature he shared with the fugitive sought. As the trial court found, Mr. Shaw did not act in any way that would support articulable suspicion that he was engaged in criminal

activity. Law enforcement was allowed to question Shaw, but he had no legal obligation to answer. Yet, his failure to respond or identify himself was the basis for his detention. He was not free to leave and was held against his will by police. Because the officers did not possess a reasonable and articulable suspicion to justify the detention, it violated the Fourth Amendment and the State Constitution.

The exclusionary rule generally bars the State from introducing into evidence the “fruits” of an unconstitutional search or seizure. The purposes of the rule are to deter police misconduct and to uphold judicial integrity. Under what is known as the attenuation doctrine, the exclusionary rule may be set aside if the connection between the police misconduct and the secured evidence becomes so attenuated as to dissipate the taint from the unlawful conduct. In *Brown v. Illinois*, the Court created a three prong test for determining whether the attenuation doctrine applies: (1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct.

The Court focused on prongs two and three for their analysis. The second prong is the presence of intervening circumstances, the parole warrant. Whether a warrant is determined to be an intervening event in an attenuation analysis depends on that case’s particular set of facts. Intervening circumstances and flagrancy factors can become intertwined, as in this case where officers initiated the stop and detention to determine if Mr. Shaw was wanted on a particular arrest warrant.

The third prong, “purpose and flagrancy of the official misconduct,” proved most burdensome against the State and is determinative in the Court’s analysis in this case. The only

distinct features that Mr. Shaw shared with the fugitive being sought by law enforcement were their skin color. Detective Brown was even prepared to take Mr. Shaw in for fingerprinting to determine his identification. The right of freedom of movement without unreasonable interference by government officials is not debatable at this point in our constitutional development. The Court further stated that “random detention of an individual for the purpose of running a warrant check, or determining whether the person is wanted on a particular warrant, contradicts the values that inhere in the Fourth Amendment.” A random stop based on nothing more than a non-particularized racial description of the person sought is especially subject to abuse.

The Court concluded that, in the circumstances of the instant case, the parole warrant was not an intervening event that sufficiently purged the taint from the unlawful detention. Mr. Shaw was detained to determine if he was named in an arrest warrant and ultimately arrested because he was the subject of a warrant, albeit a different one than the warrant triggering the stop. The Court applied the exclusionary rule not only for Mr. Shaw but also because of every individual’s right to be free from random stops. The Court suppressed the evidence, because “(this) sends the strongest possible message that constitutional misconduct will not be tolerated.”