

Supreme Court

No. 2003-352-Appeal
(P2 01-1949A)

State of Rhode Island :

v. :

Henry Acosta. :

ORDER

This case came before the Supreme Court for oral argument on December 1, 2004, pursuant to an Order directing the parties to appear and show cause why the issues raised by this appeal should not summarily be decided. Because the defendant appellant in this case, Henry Acosta, has raised constitutional issues arising from the stop and search of his motor vehicle by the Smithfield Police on March 28, 2002, our review is de novo, based on the totality of the circumstances. In conducting such a de novo review, we are bound by the trial court's findings of historical fact and credibility determinations.

However, in our opinion, there are insufficient findings of historical facts and no credibility determinations in the record, which would enable us to review the constitutional issues raised in this appeal. Specifically, the trial justice failed to make any credibility determination of Sgt. Brown, the police officer who stopped defendant and subsequently searched his automobile. The trial justice is directed to determine the officer's credibility and the reliability of his memory concerning the events that led to the stop of defendant's vehicle.

The trial justice is also directed to articulate his reasons for concluding that the search of defendant's vehicle was lawful. Although the trial justice concluded that "it would have been

perfectly appropriate for Sgt. Brown, at the police station, to make an inventory search” of the vehicle, he failed to set forth the facts upon which he based this conclusion.

We therefore remand this case to the trial justice for findings of fact and credibility determinations and his further consideration of the defendant’s motions to suppress. The trial justice, in his discretion, may permit the parties to supplement the record with further testimony.

We do not address the remaining issues raised by the defendant at this time. The papers in this case are remanded to the Superior Court for further proceedings in accordance with this Order.

Entered as an Order of this Court this 1st day of March, 2005.

S/S
Clerk