

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JARROD PENN,	§	
	§	No. 416, 2025
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware
v.	§	
	§	Cr. ID No. 2203016715
STATE OF DELAWARE,	§	
	§	
Appellee.	§	

Submitted: June 17, 2026
Decided: August 19, 2026

Before **SEITZ**, Chief Justice; **LEGROW** and **GRIFFITHS**, Justices.

ORDER

After consideration of the parties’ briefs and the record on appeal, it appears to the Court that:

(1) Jarrod Penn appeals from his convictions for various drug- and firearm-related charges. Penn raises two claims on appeal: first, that Sergeant Deshaun Ketler stopped him without the reasonable and articulable suspicion required by the Fourth Amendment, Article I, Section 6 of the Delaware Constitution, and 11 *Del. C.* § 1902; and second, that under 10 *Del. C.* §§ 4331 and 4332 the State failed to establish the chain of custody for the drug evidence because it did not call Corporal Akil, the officer who Penn identifies as the “seizing officer,” at trial. Neither claim has merit. Sergeant Ketler’s observations, taken together, provided him with

reasonable and articulable suspicion that Penn was carrying a concealed deadly weapon and was engaged in unlawful behavior. Corporal Akil—who found the drugs but never took custody of them—was not the seizing officer, and the statute did not require his presence at trial. We therefore affirm Penn’s convictions.

(2) On March 31, 2022, Sergeant Ketler of the Wilmington Police Department’s Street Crimes Unit was on patrol in an unmarked car in the area of Cityview Avenue and 30th Street. He was on his way to assist with a traffic stop that his unit was conducting near Pine Street Park, in a part of the city “well-known as a high-crime and high-drug area.”¹ A pedestrian—later identified as Penn—crossed the street in front of Ketler’s car. “Ketler noticed that the right side of Mr. Penn’s jacket hung significantly lower than the left side, as if a heavy object were weighing it down,” and that Penn’s “main focus” appeared to be the traffic stop to which Ketler was headed. Based on those observations and his training and experience, Ketler “strongly suspected Mr. Penn was carrying a handgun in his right pocket.”²

(3) Ketler left off his plan to join the traffic stop so he could keep watching Penn. Penn entered the park and sat on a bench, where he “appeared nervous and

¹ *State v. Penn*, 2023 WL 3221887, at *1 (Del. Super. May 1, 2023).

² *Id.*

continued to monitor the traffic stop from his seat.”³ Over the course of two minutes, Penn stood up and sat down repeatedly, as though he could not decide what to do. Penn then left the park. Ketler radioed the officers conducting the traffic stop to warn them that a person watching them was potentially armed.⁴ After leaving the park, Penn approached a nearby residence, where he attempted to conceal himself behind some trees while continuing to monitor the traffic stop.⁵ Penn then came back onto the sidewalk “to get a better look down the street.”⁶

(4) At that point, Sergeant Ketler approached Penn and asked if they could speak. Penn asked why Ketler was “messaging with” him; Ketler replied, “I believe you have a firearm.”⁷ Penn raised his right hand toward his pocket, and Ketler ordered him to keep his hands at his side. When backup officers arrived, Penn ran. The officers caught him after a short chase and recovered a loaded handgun from his right jacket pocket and crack cocaine from his left.⁸

(5) At trial, the jury heard how the cocaine made its way into evidence: Corporal Akil found it in Penn’s left pocket, removed it briefly, and put it back;

³ *Id.*

⁴ App. to Appellant’s Opening Br. at A49–51.

⁵ *Id.* at A53–54, A81.

⁶ *Penn*, 2023 WL 3221887, at *2.

⁷ *Id.*

⁸ *Id.*

Detective Moses later took custody of the cocaine at the police station, where he field-tested, tagged, and sealed it before placing it in the evidence locker.⁹ A forensic chemist later tested the substance and confirmed that it was cocaine.¹⁰

(6) A grand jury indicted Penn on charges of drug dealing, possession of a firearm during the commission of a felony (“PFDCF”), possession of a firearm by a person prohibited (“PFBPP”), possession of ammunition for a firearm by a person prohibited (“PABPP”), carrying a concealed deadly weapon (“CCDW”), and resisting arrest.¹¹ After an evidentiary hearing, the Superior Court denied Penn’s motion to suppress, concluding that the encounter became an investigative detention when Ketler ordered Penn to keep his hands at his side and that Ketler’s observations by then supported a reasonable and articulable suspicion that Penn was carrying a concealed deadly weapon.¹² The court severed the person-prohibited charges for a separate trial, and the State amended the drug-dealing charge to felony drug possession.

(7) At trial, Penn objected to the State’s decision not to call Corporal Akil, asserting a right to confront him about the chain of custody. The State responded that Akil was not a required chain-of-custody witness, and the court admitted the

⁹ App. to Appellant’s Opening Br. at A151, A153, A166–67, A192, A199.

¹⁰ *Id.* at A244.

¹¹ *Id.* at A16–18.

¹² *Penn*, 2023 WL 3221887, at *2–*5.

drug evidence over Penn’s objection.¹³ A jury found Penn guilty of drug possession, PFDCF, and CCDW, and the Superior Court—after a bench trial on the severed charges—found him guilty of PFBPP and PABPP.¹⁴ The court sentenced Penn to an aggregate of 21 years of Level V incarceration, suspended after eight years for Level III probation.¹⁵ This appeal followed.

(8) We review *de novo* the Superior Court’s determination that the police had a reasonable and articulable suspicion to stop Penn.¹⁶ An officer may stop a person for investigative purposes when the totality of the circumstances, viewed through the eyes of a reasonable, trained police officer, supports a reasonable and articulable suspicion that the person is committing, has committed, or is about to commit a crime.¹⁷

(9) Penn devotes much of his briefing to the question of when the encounter became a seizure—in his view, the moment Ketler said he believed that Penn had a firearm; in the Superior Court’s view, the moment that Ketler ordered Penn to keep his hands at his side.¹⁸ We need not choose. Before he approached Penn, Ketler had

¹³ App. to Appellant’s Opening Br. at A99–105, A168–71.

¹⁴ *Id.* at A328, A332, A334.

¹⁵ Appellant’s Opening Br. Ex. A (Sentence Order).

¹⁶ See *McDougal v. State*, 314 A.3d 1077, 1086 (Del. 2024).

¹⁷ 11 *Del. C.* § 1902; *Backus v. State*, 845 A.2d 515, 517 (Del. 2004).

¹⁸ Appellant’s Corrected Opening Br. at 12–14; *Penn*, 2023 WL 3221887, at *3.

already seen enough to justify an investigative stop. In a high-crime, high-drug area, he had watched a jacket pocket sag “as if a heavy object were weighing it down”—an observation that his “seventeen years of extensive training and experience” told him meant a concealed handgun.¹⁹ He had then watched Penn nervously monitor the traffic stop—first from a park bench and then, after briefly trying to conceal himself between two residences, from the sidewalk.²⁰ Penn’s nervous surveillance of the police, coupled with an effort to stay out of their sight, caused Ketler to be concerned for officer safety at the ongoing traffic stop and suggested that whatever Penn was doing, he was not doing it lawfully. Taken together, and viewed through the eyes of an officer with Ketler’s training and experience, these observations added up to a reasonable and articulable suspicion that Penn was engaged or about to engage in criminal activity, including carrying a concealed deadly weapon.²¹ And because that suspicion was complete before the earliest moment at which Penn claims he was seized, the timing of the seizure makes no difference to the constitutionality of the stop.²²

¹⁹ *Penn*, 2023 WL 3221887, at *1, *4.

²⁰ *Id.* at *4.

²¹ See *Flowers v. State*, 195 A.3d 18, 22, 30–31 (Del. 2018) (upholding a stop where officers in a high-crime area saw the defendant grab a rectangular object protruding from his waistband, conduct that a trained officer recognized as an attempt to conceal a firearm).

²² Penn separately argues that his apparent possession of a concealed firearm could not supply a reasonable suspicion of criminal activity because he may well have been licensed to carry it, and he asks us to reconsider *Upshur v. State*, 420 A.2d 165, 169 (Del. 1980), in light of *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). *Upshur* holds that a license is an affirmative

(10) Penn next challenges the admission of the drug evidence. We review the Superior Court’s admission of evidence for abuse of discretion, but where the ruling turns on the interpretation of a statute, our review is *de novo*.²³ Sections 4331 and 4332 establish requirements for the admission of drug evidence.²⁴ Upon a defendant’s written demand filed at least five days before trial, the State must produce the members of the statutory “chain of custody” as witnesses: the seizing officer, the packaging officer if a different officer, and the forensic toxicologist or forensic chemist who tested the substance.²⁵ The statute does not define the “seizing officer.” Section 4331, however, intentionally limits the chain-of-custody witnesses and thereby “eliminate[s] the logistical and financial burden that the State would have if it were required to produce at trial every person who handled the evidence,

defense to a charge of carrying a concealed deadly weapon, not an element of the offense. So long as that is the law, the possibility that Penn was licensed changes nothing: the State need not disprove an affirmative defense to establish the crime, and an officer need not rule one out to form a reasonable suspicion that the crime is being committed. This is not the case in which to assess *Upshur*’s continued viability. Sergeant Ketler’s suspicion rested on the totality of the circumstances recounted above, not solely on the presence of a concealed firearm, and settled precedent is overturned “only for urgent reasons and upon clear manifestation of error.” *Berry v. State*, 349 A.3d 1130, 1141 (Del. 2025) (quotation omitted).

²³ *Hairston v. State*, 249 A.3d 375, 380–81 (Del. 2021).

²⁴ 10 Del. C. §§ 4331–4332; *see Hairston*, 249 A.3d at 381.

²⁵ *Hairston*, 249 A.3d at 383 (stating that Sections 4331 and 4332 “do not contemplate or permit the substitution of another witness”). The State argued on appeal that Penn did not make the statutorily required demand upon the State to produce the chain-of-custody witnesses. In reply, Penn cites two pretrial discovery letters expressly demanding the production of those witnesses. Appellant’s Reply Br. Ex. A (Rule 16 Requests). The State acknowledges that this is standard practice in Delaware for making a Section 4332 demand. Appellee’s Answering Br. at 36.

irrespective of how tangential the contact might have been.”²⁶ The seizing officer, then, is the officer who takes the drugs into the State’s custody as evidence and sets the chain of custody in motion.

(11) Penn argues that Corporal Akil became the “seizing officer” the moment that he pulled the bag from Penn’s pocket.²⁷ But Akil never took custody of the drugs. He returned the bag to Penn’s pocket, where it remained until Detective Moses collected it at the police station. It was Detective Moses who field-tested, tagged, and sealed the drug evidence and thereby initiated the chain of custody. Penn’s approach would fix the seizing officer at the first moment of physical contact, not the moment when the evidence was taken into the State’s custody. This approach is difficult to reconcile with Section 4331’s strict limitation on chain-of-custody witnesses. Akil, in short, was the officer who discovered the drugs, whereas Moses was the officer who seized and packaged them. Because Moses and the forensic chemist testified at trial, the State complied with the requirements of Sections 4331 and 4332. The Superior Court did not err in admitting the drug evidence.

²⁶ *Hairston*, 249 A.3d at 383 (quoting *Demby v. State*, 695 A.2d 1127, 1132 (Del. 1997)).

²⁷ Appellant’s Corrected Opening Br. at 24–26.

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

BY THE COURT:

/s/ Abigail M. LeGrow
Justice