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IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMONT VALENTINE, Defendant-Below, Appellant, v. STATE OF DELAWARE, Plaintiff-Below, Appellee.	)))))))))))	No. 15, 2018

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On August 1, 2016, a New Castle County grand jury returned an indictment charging Lamont Valentine ("Valentine") with Possession of a Firearm by a Person Prohibited (11 *Del. C.* § 1448) ("PFBPP") and Carrying a Concealed Deadly Weapon (11 *Del. C.* § 1442) ("CCDW"). (D.I. 13; A9-10). On December 13, 2016, Valentine filed a motion to suppress the evidence seized in his case, and a hearing was held on January 6, 2017. (D.I. 24, 29). On January 17, 2017, the Superior Court issued an order denying Valentine's motion to suppress. (D.I. 30).[1]

Valentine stipulated that he was a person not legally permitted to possess a firearm or ammunition. (D.I. 31; A184-85). On January 18, 2017, the Superior Court held a stipulated bench trial and found Valentine guilty of PFBPP. (D.I. 33). At trial, the State agreed to enter a *nolle prosequi* on the CCDW charge at Valentine's sentencing. (D.I. 33, 41).

The Superior Court ordered a presentence investigation. (D.I. 33). Sentencing was delayed to provide briefing to the court regarding the amount of minimum mandatory incarceration time that the court was required to impose for Valentine's PFBPP conviction under 11 *Del. C.* § 1448. (D.I. 36-39). On December

[1] *State v. Valentine*, Del. Super., ID No. 1603014628, Scott, J. (Jan. 17, 2017) (ORDER) (hereinafter, the "Order"). A copy of the Order is attached as Exhibit A to Valentine's Opening Brief ("Op. Br.").

8, 2017, the Superior Court sentenced Valentine to 10 years at Level V.[2] (D.I. 41; A266-72). On January 8, 2018, Valentine filed a timely Notice of Appeal. On May 9, 2018, Valentine filed his opening brief. This is the State's answering brief.

[2] The Superior Court sentenced Valentine to an additional 6 years at Level V, suspended for Level III supervision, on separate convictions in Superior Court case number 1603023004 for Drug Dealing, Aggravated Possession, Possession of Drug Paraphernalia, and Endangering the Welfare of a Child. (A266-72).

SUMMARY OF THE ARGUMENT

I. Denied. The plain language of 11 *Del. C.* §§ 1448(e)(1) and (e)(3) provide that a person convicted of possession of a firearm by a person prohibited shall receive a minimum sentence of "[t]en years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony" "designated by [11 *Del. C.*] § 4201(c) . . ., or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c)." Valentine meets this unambiguous statutory requirement because he was convicted on two separate occasions of violent felonies in the Commonwealth of Pennsylvania, which are the same as or equivalent to offenses designated as violent felonies by section 4201(c). The Superior Court thus properly sentenced Valentine to the applicable ten-year minimum enhanced penalty set forth in section 1448 for those felons convicted of PFBPP with two previous convictions for any violent felonies. Further, in sentencing Valentine under section 1448, it was not improper for the Superior Court to consider the Pennsylvania initial arrest warrant and supporting affidavits of probable cause to determine whether Valentine's prior convictions constituted violent felonies under Delaware law.

II. Denied. The Superior Court did not abuse its discretion in denying Valentine's motion to suppress the handgun and ammunition obtained as a result of

the search of his vehicle. The police officer had probable cause to search Valentine's vehicle for contraband based on the totality of the circumstances, including a traffic violation, the odor of marijuana coming from the vehicle, and Valentine's admission that he smoked marijuana earlier in the evening.

STATEMENT OF FACTS[3]

On or about March 19, 2016, at approximately 1:00 a.m., Trooper Chase Lawson (hereinafter "Trooper Lawson") observed Valentine's Dodge Challenger traveling at a high rate of speed northbound on U.S. Route 202. Using his radar unit, Trooper Lawson determined that Valentine's vehicle was operating at approximately 72 miles per hour in a 40 mile per hour zone. Trooper Lawson conducted a traffic stop based on this Title 21 violation. As Trooper Lawson approached the vehicle, he smelled an odor of marijuana emanating from the vehicle. He testified that he could not determine if the odor was burnt or raw. After taking Valentine's license, insurance, and registration information, Trooper Lawson asked Valentine to exit the vehicle. Valentine told Trooper Lawson that he smoked earlier. Upon search of the vehicle, Trooper Lawson found a 9 mm handgun and 34 rounds of ammunition underneath the driver's seat. Trooper Lawson did not find any marijuana in the vehicle. Valentine is a person prohibited because he has felony convictions in the Commonwealth of Pennsylvania.

[3] These facts are substantially adopted from the Superior Court's Order. (Ex. A to Op. Br.).

I. THE SUPERIOR COURT CORRECTLY SENTENCED VALENTINE TO SERVE THE MANDATORY MINIMUM SENTENCE REQUIRED BY 11 *DEL. C.* § 1448(e)(1)(c).

Question Presented

Whether the Superior Court properly found that Valentine had two qualifying prior violent felony convictions requiring the imposition of a ten-year minimum mandatory sentence, pursuant to 11 *Del. C.* § 1448(e)(1)(c).

Standard and Scope of Review

This Court reviews "statutory construction issues *de novo* to determine if the Superior Court erred as a matter of law in formulating or applying legal precepts."[4]

Merits

In January 2017, Valentine was found guilty after a stipulated trial of PFBPP in violation of 11 *Del. C.* § 1448. (A6). Under section 1448(c), possession of a firearm by a person prohibited is a class D felony, punishable by zero to eight years imprisonment.[5] If the defendant possesses the firearm after being convicted on two or more separate occasions of any violent felony, however, the offense is a class C

[4] *Snyder v. Andrews*, 708 A.2d 237, 241 (Del. 1998) (citing *Zimmerman v. State*, 628 A.2d 62, 66 (Del. 1993)); *Watson v. Burgan*, 610 A.2d 1364, 1367 (Del. 1992).

[5] *See* 11 *Del. C.* § 1448(c); 11 *Del. C.* § 4205(b)(4).

felony, punishable by up to fifteen years imprisonment, and the minimum sentence is ten years imprisonment.[6]

Valentine had two out-of-state violent felony convictions. Specifically, Valentine had been convicted in September 2009 in the Commonwealth of Pennsylvania of "Possession with Intent to Deliver Marijuana," in violation of 35 Pa. Cons. Stat. § 780-113(30). (A211, A213, A216). Valentine had also pled guilty in April 2010 in Pennsylvania to "Firearms Not to be Carried Without a License," in violation of 18 Pa. Cons. Stat. § 6106(a)(1). (A222-34). Before sentencing, the State provided the Superior Court with certified copies of Valentine's two prior felony convictions and copies of the affidavits of probable cause for arrest, and argued that Valentine's 2009 and 2010 Pennsylvania convictions were equivalent to qualifying violent felonies set forth in 11 *Del. C.* § 4201(c), requiring the court to impose a minimum mandatory sentence of ten years Level V for the PFBPP offense. (A198-237).

Defense counsel argued, however, that Valentine should not be subject to the ten-year minimum Level V enhanced sentence of 11 *Del. C.* § 1448(e)(1)(c) for his PFBPP conviction. (A187-89, A191-97, A238-39, A242-55, A257-61). According

[6] *See* 11 *Del. C.* § 4205(b)(3); 11 *Del. C.* § 1448(c) & (e)(1)(c). If Valentine had possessed the firearm after being convicted of only one violent felony, the PFBPP offense would have been a class C felony and the minimum sentence would have been five years imprisonment, because Valentine's Pennsylvania convictions were less than ten years ago. 11 *Del. C.* § 1448(e)(1)(b). (*See* A201-37).

to Valentine, the enhanced sentencing provision of section 1448(e)(1)(c) should not apply because he is not a person who "has been convicted on 2 or more separate occasions of any violent felony."[7] (Op. Br. at 9-10). Valentine does not contest the existence or validity of the Pennsylvania convictions. Nor does Valentine argue that his two prior convictions do not involve separate occasions or incidents. Rather, Valentine argues that his September 2009 and April 2010 convictions in the Commonwealth of Pennsylvania were not violent felonies because he claims that "[n]either offense is the same as or equivalent to an offense enumerated within . . . [11 *Del. C.* §] 4201(c)." (*Id.* at 10). Specifically, Valentine claims that the Pennsylvania statutes under which he was convicted are broader than the comparable Delaware statutes, and thus the Pennsylvania statutes under which he was convicted are not the same as or equivalent to 11 *Del. C.* § 1442, or any offense enumerated as a violent felony in section 4201(c). (*Id.* at 9-17). Valentine also contends that the trial court was not permitted to consider Valentine's arrest reports and affidavits of probable cause when analyzing Valentine's prior convictions. (*Id.* at 17-18).

The Superior Court rejected Valentine's argument that his Pennsylvania convictions were not for crimes that were the equivalent of violent felonies under 16 *Del. C.* § 4201(c). (A240-41). The court found that Valentine's convictions in the Commonwealth of Pennsylvania in 2009 for Possession with Intent to Deliver

[7] 11 *Del. C.* § 1448(e)(1)(c).

("PWID") Marijuana, and in 2010 for Firearms Not to Be Carried Without a License, were the same as or equivalent to the Delaware statutes of Drug Dealing (16 *Del. C.* § 4753), and Carrying a Concealed Deadly Weapon (11 *Del. C.* § 1442), which are both violent felonies enumerated in 11 *Del. C.* § 4201(c). (*Id.*). Consequently, the Superior Court found that Valentine had two predicate violent felony convictions and sentenced him for PFBPP, pursuant to 11 *Del. C.* § 1448(e)(1)(c). (*Id.*). The Superior Court's interpretation of 11 *Del. C.* § 1448(e)(1)(c) is not legally erroneous and must be upheld on appeal. Further, the Superior Court did not improperly consider predicate facts in sentencing Valentine under the statute.

Title 11, section 1448(e)(1)(c) of the Delaware Code provides that:

> [A]ny person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:
>
> . . .
>
> c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.[8]

And subsection 1448(e)(3) further provides that:

> Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the

[8] 11 *Del. C.* § 1448(e)(1)(c).

> **same as or equivalent to** any of the offenses designated as a violent felony by § 4201(c) of this title.[9]

When the language of a statute is unambiguous, there is no need for statutory interpretation, and the plain meaning of the words of the statute controls.[10] "A statute is ambiguous if 'it is reasonably susceptible of different conclusions or interpretations' or 'if a literal reading of the statute would lead to an unreasonable or absurd result not contemplated by the legislature."[11] Valentine does not argue that there is any ambiguity in the enhanced sentencing provisions of 11 *Del. C.* § 1448(e), and this Court has previously found that subsections 1448(e)(1)(c) and 1448(e)(3) are unambiguous.[12] There is also no ambiguity in 11 *Del. C.* § 4201(c).[13] Thus, the plain meaning rule of statutory construction applies here.

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[9] 11 *Del. C.* § 1448(e)(3) (emphasis added).

[10] *See Levan v. Independence Mall, Inc.*, 940 A.2d 929, 932-33 (Del. 2007); *Ingram v. Thorpe*, 747 A.2d 545, 547 (Del. 2000); *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989).

[11] *Levan*, 940 A.2d at 933 (quoting *Newtowne Village Serv. Corp. v. Newtowne Rd. Dev. Co.*, 772 A.2d 172, 175 (Del. 2001)).

[12] *Butcher v. State*, 171 A.3d 537, 541 (Del. 2017) (finding subsections 1448(e)(1)(c), 1448(e)(3), and 4201(c) of title 11 unambiguous); *Ross v. State*, 990 A.2d 424, 431 (Del. 2010) ("Section 1448(e)(1)(c) is unambiguous, and a literal interpretation of that statute does not yield unreasonable results that were not intended by the legislature.").

[13] *Butcher*, 171 A.3d at 541.

A. The Superior Court Properly Determined That Valentine's Pennsylvania Convictions Were The "Same As Or Equivalent To" Offenses Designated As Violent Felonies by 11 *Del. C.* § 4201(c).

Valentine was convicted in September 2009 of "PWID Marijuana," in violation of 35 Pa. Cons. Stat. § 780-113(a)(30), which criminalizes "the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act."[14] (*See* A202-20). Valentine was also convicted in April 2010 of "Firearms Not to be Carried Without a License," in violation of 18 Pa. Cons. Stat. § 6106(a)(1), which criminalizes a person "carry[ing] a firearm concealed on or about his person."[15] (*See* A222-37).

Relying on *United States v. Haney*,[16] Valentine argues that the Superior Court erred in finding that Valentine's Pennsylvania convictions are the same as or equivalent to the Delaware drug dealing statute (Class D), 16 *Del. C.* § 4754(1), and the Delaware carrying a concealed weapon statute, 11 *Del. C.* § 1442, because the Pennsylvania statutes of conviction are broader and encompass conduct that does not constitute a crime under the comparable, qualifying Delaware statutes. (Op. Br. at 10-11, 14-15). Specifically, Valentine claims that the Superior Court improperly found that his conviction under 35 Pa. Cons. Stat. § 780-113(a)(30), is the same as

[14] 35 Pa. Cons. Stat. § 780-113(a)(30).

[15] 18 Pa. Cons. Stat. § 6106(a)(1).

[16] 840 F.3d 472 (7th Cir. 2016).

or equivalent to 16 *Del. C.* § 4754(1), because section 780-113(a)(30) also prohibits "knowingly creating, delivering or possessing with intent to deliver, a *counterfeit* controlled substance," which is not a violent felony under Delaware law.[17] (*Id.* at 9-12). Valentine also contends that the Superior Court improperly found that Valentine's conviction under 18 Pa. Cons. Stat. § 6106(a)(1), is the same as or equivalent to 11 *Del. C.* § 1442,[18] because section 6106(a)(1) prohibits "carry[ing] a firearm in any vehicle," which is not prohibited under section 1442.[19] (*Id.* at 12-13). Valentine's reliance on *Haney* is mistaken, and he is otherwise wrong.

First, although 35 Pa. Cons. Stat. § 780-113(a)(30) prohibits two types of conduct that, in Delaware, constitute a violent or a nonviolent felony depending on whether the substance is a controlled substance or a counterfeit controlled substance, Valentine ignores that he was convicted for PWID *Marijuana*. Specifically, the certified conviction records from the Commonwealth of Pennsylvania reflect that Valentine was convicted for "PWID Marijuana," a controlled substance, and *not* for

[17] According to Valentine, this offense is comparable to 16 *Del. C.* § 4758, which is not a violent felony under 11 *Del. C.* § 4201. (Op. Br. at 11-12).

[18] 16 *Del. C.* § 4754(1) provides that any person who "[m]anufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance" is guilty of a class D felony. No specific quantity of a controlled substance is required to violate section 4754(1). *See* 16 *Del. C.* § 4754(1).

[19] 11 *Del. C.* § 1442 prohibits a person from "carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title."

PWID of a counterfeit controlled substance.[20] (*See* A211, A213, A216). As the Superior Court found, the offense of PWID of a controlled substance in 35 Pa. Cons. Stat. § 780-113(a)(30), is the same as or equivalent to 16 *Del. C.* § 4754(1), which is designated as a violent felony under 11 *Del. C.* § 4201(c).

Second, although, unlike 11 *Del. C.* § 1442, 18 Pa. Cons. Stat. § 6106(a)(1) prohibits carrying a firearm in any vehicle, Valentine pled guilty to carrying a concealed firearm in his pants pocket, not to carrying a firearm in a vehicle. (*See* A222-237). Specifically, although the certified conviction records from the Commonwealth of Pennsylvania simply reflect that Valentine pleaded guilty to "Firearms Not to be Carried Without a License," in violation of 18 Pa. Cons. Stat. § 6106(a)(1), it is clear from the documentation provided to the sentencing court that Valentine was not convicted of carrying a firearm in a vehicle. Specifically, the State provided the sentencing court with a copy of the Philadelphia Police Department probable cause affidavit, which indicates that the handgun was found in Valentine's rear pants pocket and that he had no license to carry that weapon. (*See* A222-237). As the Superior Court found, the offense of carrying a concealed weapon under 18 Pa. Cons. Stat. § 6106(a)(1), is the same as or equivalent to 11 *Del. C.* § 1442 which is designated as a violent felony under 11 *Del. C.* § 4201(c).

[20] Marijuana is defined as a controlled substance in 35 Pa. Cons. Stat. § 780-104(1)(iv), and in 16 *Del. C.* § 4714(d)(19).

Valentine's reliance on *Haney* is misplaced. *Haney* involved the interpretation of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924, a federal law, which imposes greater penalties for repeat offenders.[21] In *Haney*, the Seventh Circuit relied on the United States Supreme Court's decision in *Mathis v. United States*,[22] and held that the defendant's previous state convictions for burglary were not violent felonies under the ACCA because the state burglary statute was broader than "generic burglary," and therefore could not serve as predicate offenses to enhance defendant's sentence under the ACCA.[23] *Haney* is not applicable to the facts of this case. Valentine was sentenced under Delaware law, 11 *Del. C.* § 1448,

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[21] *Haney*, 840 F.3d at 475.

[22] ___ U.S. ____, 136 S. Ct. 2243 (2016). In *Mathis*, the United States Supreme Court declared that burglary in Iowa does not qualify as a predicate violent felony offense under the ACCA because it is broader than the "generic" offense of burglary listed in section 924(e)(2)(B)(ii). *Id.*

[23] *Haney*, 840 F.3d at 475-76. The ACCA imposes a 15-year mandatory minimum sentence on certain federal defendants who have three prior convictions for a "violent felony," including "burglary, arson, or extortion." *See id.* at 474; 18 U.S.C. § 924. In listing the applicable crimes, "Congress referred only to their usual or (in our terminology) generic versions – not to all variants of the offenses." *See Mathis*, 136 S. Ct. at 2248. According to the United States Supreme Court, "[t]o determine whether a prior conviction is for generic [offense] . . ., courts apply what is known as the categorical approach: They focus solely on whether the elements of the crime of conviction sufficiently match the elements of generic [offense], while ignoring the particular facts of the case." *Id.* The *Mathis* Court further explained that "[a] crime counts as [a generic offense] under the [ACCA] if its *elements* are the same as, or narrower than, those of the generic offense. But if the crime of conviction covers any more conduct than the generic offense, then it is not an ACCA [crime] – even if the defendant's actual conduct (i.e., the facts of the crime) fits within the generic offense's boundaries." *Id.*

to a minimum sentence within the prescribed statutory range under Delaware law, *not* an enhanced punishment under the ACCA. Also, Delaware's General Assembly specifically enumerated those offenses deemed to be "violent felonies," avoiding the problem posed in *Haney* of ascertaining which types of offenses are "violent felonies."[24]

Further, the fact that Valentine was convicted in Pennsylvania under statutes that cover more conduct than is intended to be punished by the comparable Delaware statutes, does not prevent the trial court from properly using Valentine's Pennsylvania convictions to enhance Valentine's sentence under section 1448. Although there do not appear to be any decisions addressing section 1448(e)(3)'s "same as or equivalent to" language, this Court has construed identical language under Delaware's habitual offender statute, 11 *Del. C.* § 4214(b), in *Fletcher v. State*[25] and *Morales v. State*.[26] According to this Court, to determine whether an offense is the "same as or equivalent to" a qualifying Delaware offense, sentencing courts are permitted to look at the prior conduct of the defendant as it relates to the felonies in the Delaware Criminal Code.[27] Although this Court's decisions address

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[24] *See Butcher*, 171 A.3d at n. 16.

[25] 409 A.2d 1254 (Del. 1979).

[26] 696 A.2d 390 (Del. 1997).

[27] *Morales*, 696 A.2d at 395; *Fletcher*, 409 A.2d at 1255-56; *see also Hall v. State*, 788 A.2d 118, 128-29 (Del. 2001). According to this Court, a defendant can be sentenced as an habitual offender under section 4214(b), using felony convictions in

out-of-state convictions as they relate to the habitual offender statute, the habitual offender statute contained the same language, "the same as or equivalent to," as that found in section 1448(e). Thus, the decisions are relevant here.

Valentine attempts to distinguish *Fletcher* and *Morales*, claiming that the cases are inapplicable, because the habitual offender statute, 11 *Del. C.* § 4214, "simply" requires a foreign conviction be "comparable" to an offense enumerated in 11 *Del. C.* § 4201(c), unlike 11 *Del. C.* § 1448, which requires an out-of-state conviction stem from an offense "which is the same as or equivalent to" a Delaware violent felony. (Op. Br. at 16-18). Valentine is mistaken. Although the current version of 11 *Del. C.* § 4214 requires a foreign conviction be "comparable," when *Fletcher* and *Morales* were decided, section 4214 required foreign convictions to be "the same as or equivalent to" a qualifying Delaware offense.[28]

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courts other than those of the State of Delaware, only if the State proves that the defendant was convicted of criminal acts which would support a conviction for one of the felonies enumerated in section 4214. *Fletcher*, 409 A.2d at 1255-56; *Morales*, 696 A.2d at 395. This Court has explained that "[t]he best and most just method of determining those deserving of such punishment is to look at the prior conduct of the defendant as it relates to the felonies in the Delaware Criminal Code, rather than to rely on technical classifications of other jurisdictions over which our legislature has no control." *Fletcher*, 409 A.2d at 1255.

[28] *See Fletcher*, 409 A.2d at n.1 (citing 11 *Del. C.* § 4214(c), which provided that "[a]ny person convicted under the laws of another state, the United States or any territory of the United States of any felony the same as or equivalent to any of the above or hereinafter named felonies is an habitual offender for the purposes of this section and [section] 4215 of this title."). The General Assembly substituted the phrase "comparable" for the prior phrase "the same as or equivalent to" in July 2016. *See* S.B. 163, 148th Gen. Assembly, 2nd Reg. Sess. (Del. 2016) *available at*

Valentine also contends that the Superior Court ruled that the charges underlying the Pennsylvania convictions "meet generally the definitions of the Delaware Code in regards to both of them as violent felonies," contrary to the requirement in 11 *Del. C.* § 1448 that the convictions must be "the same as or equivalent." (Op. Br. at 17). In support of this argument, Valentine relies on a comment made by the Superior Court at the December 8, 2017 sentencing when the court was addressing Valentine's motion for reargument of the court's December 5, 2017 decision.[29] (*Id.*; *see* A257-61). Valentine takes the Superior Court's comment out of context. It is clear from the Superior Court's December 5, 2017 decision and other comments made by the court at the December 8, 2017 hearing that the court found the statutes to be "equivalent," and not just "generally" matching. (*See* A240-41 (finding statute "equivalent"), A257 (noting that court had decided whether the Pennsylvania offenses were the "equivalent" of Delaware violent felonies).

The Superior Court correctly determined that Valentine had been convicted on two separate occasions of offenses under the laws of the Commonwealth of Pennsylvania, which were the same as or equivalent to two offenses designated as

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http://legis.delaware.gov/json/BillDetail/GetHtmlDocument?fileAttachmentId=48174.

[29] On reargument, Valentine contended that the court went beyond the documentation that it is allowed to review to determine whether or not the out-of-state offense would be the "equivalent" of a Delaware violent felony. (A242-55, A256-61).

violent felonies under 11 *Del. C.* § 4201(c). Because Valentine was previously convicted of two violent felonies, the Superior Court properly sentenced him to the applicable ten-year minimum enhanced penalty set forth in section 1448 for those felons convicted of PFBPP with two previous convictions for any violent felonies.

B. In sentencing Valentine Under 11 *Del. C.* § 1448, The Superior Court Properly Considered The Pennsylvania Arrest Warrant And Supporting Affidavits of Probable Cause To Determine Whether Valentine Had Been Convicted On Two Separate Occasions Of Offenses In Pennsylvania, Which Were The "Same As Or Equivalent To" Offenses Designated As Violent Felonies by 11 *Del. C.* § 4201(c).

Citing *Mathis v. United States*,[30] *Apprendi v. New Jersey*,[31] and *Shepard v. United States*,[32] Valentine argues that the Superior Court improperly relied upon documentation "forbidden" by the United States Supreme Court in finding that his prior convictions constituted violent felonies. (Op. Br. at 17-23). Specifically, Valentine claims that these Supreme Court decisions limit evidence of a "prior conviction" to a judicial record, and thus, it was improper for the sentencing court to review arrest reports and associated affidavits of probable cause when analyzing Valentine's prior convictions. (*Id.*). *Mathis*, *Apprendi*, and *Shepard* are inapposite,

[30] 136 S. Ct. 2243 (2016).

[31] 530 U.S. 466 (2000).

[32] 544 U.S. 13 (2005).

however.

In *Mathis*, *Apprendi*, and *Shepard*, the United States Supreme Court interpreted the ACCA – a federal law. In deciding whether an admitted offense meets a federal generic definition under the ACCA, the sentencing court is not permitted to "go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense."[33] The sentencing court "is generally limited to examining the statutory definition, charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented."[34]

These cases are not implicated here, however, as Valentine was sentenced under state law within the statutory range of authorized sentences for PFBPP, and not under the ACCA. The Superior Court decided under appropriate state law that the offenses Valentine was convicted for in Pennsylvania were the same as or equivalent to offenses designated as violent felonies by 11 *Del. C.* § 4201(c) and imposed the minimum mandatory ten year sentence. (A240-41).

Nothing in *Mathis*, *Apprendi*, and *Shepard* can be construed as the Supreme Court of the United States mandating that state courts similarly employ an "elements only" test when interpreting and applying state-specific sentence enhancing

[33] *Mathis*, 136 S. Ct. at 2252.

[34] *Shepard*, 544 U.S. at 16.

statutes.[35] Moreover, in *Brown v. State*,[36] this Court rejected the argument that *Apprendi* prevents a Delaware court sentencing a defendant under 11 *Del. C.* § 1448(e) from considering facts that impact the length of a sentence that is less than the statutory maximum.[37] According to this Court, "facts guiding judicial discretion below the statutory maximum need not be alleged in the indictment, submitted to a jury, or proved beyond a reasonable doubt."[38] This Court's holding in *Brown* is consistent with this Court's holding in *Fletcher* and *Morales*, which recognized that "[t]he best and most just method" of determining whether an individual qualifies as an habitual offender as a result of out-of-state convictions is to look at the defendant's conduct as it relates to the felonies in the Delaware Criminal Code instead of relying on "technical classifications of other jurisdictions over which our legislature has no control."[39] Accordingly, it was not improper for the Superior

[35] *See Nordahl v. State*, 811 S.E.2d 465, 471 (Ga. Ct. App. 2018).

[36] 2002 WL 31300027 (Del. Oct. 10, 2002).

[37] *Id.* at *1.

[38] *Id*.

[39] *Fletcher*, 409 A.2d at 1255-56; *State v. McLaughlin*, 1997 WL 718658, at *3 (Del. Super. Ct. Aug. 8, 1997) ("It is well settled that a conviction in a foreign jurisdiction may be used for purposes of determining habitual offender status if the prior conduct of the defendant corresponds to a felony in the Delaware Criminal Code rather than relying upon the technical classifications of other jurisdictions. Therefore, if the defendant's conduct would have constituted a listed felony in Delaware, the charge is included for habitual offender purposes."), *aff'd on other grounds*, 1998 WL 665056 (Del. Sept. 14, 1998); *Hall*, 788 A.2d at 128; *see also McNeill v. State*, 2011 WL 4478122, at *2 (Del. Sept. 27, 2011) (holding that to meet State's burden of

Court to consider the Pennsylvania initial arrest warrant and supporting affidavits of probable cause for the limited purpose of determining that Valentine's prior convictions constituted violent felonies under Delaware law.[40]

proving beyond a reasonable doubt that each predicate offense satisfies the requirements of 11 *Del. C.* § 4214, the State "need offer only unambiguous documentary evidence of a prior predicate conviction, not live witnesses, and not a particular or exclusive type of documentary evidence"); *Hall*, 788 A.2d at 128 (same); *State v. Harrell*, 2014 WL 606631, at *4 (Del. Super. Ct. Jan. 29, 2014) (same).

[40] Although the Superior Court noted that Valentine's arrest report for his PWID Marijuana conviction reflects that the quantity of marijuana was 230.9 grams, which would classify as a Tier 1 controlled substance, (A240), no specific quantity of a controlled substance is required for a violation of section 4754(1). *See* 16 *Del. C.* § 4754(1). As a result, it was unnecessary for the Superior Court to examine the Pennsylvania initial arrest warrant and supporting affidavit of probable cause for Valentine's PWID Marijuana conviction.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING VALENTINE'S MOTION TO SUPPRESS; OFFICERS HAD PROBABLE CAUSE TO SEARCH THE VEHICLE.

Question Presented

Whether the Superior Court abused its discretion in denying a motion to suppress, where the court followed this Court's precedent and found the odor of marijuana coming from inside the vehicle established probable cause to conduct a warrantless search of the vehicle.

Standard and Scope of Review

"This Court reviews a trial court's denial of a motion to suppress after an evidentiary hearing for abuse of discretion."[41] Legal conclusions are evaluated *de novo*.[42] Factual findings are reviewed "to determine 'whether the trial judge abused his or her discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.'"[43]

Merits

Prior to trial, Valentine filed a motion to suppress the handgun and ammunition obtained as a result of the search of his vehicle. Valentine argued that Trooper Lawson did not have probable cause to search his vehicle after stopping him

[41] *Rivera v. State*, 7 A.3d 961, 966 (Del. 2010).

[42] *Jenkins v. State*, 970 A.2d 154, 157 (Del. 2009).

[43] *Id.* (quoting *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284-85 (Del. 2008)).

for driving over 30 miles per hour above the posted speed limit. The Superior Court held a suppression hearing, at which Trooper Lawson testified. (*See* A119-30). The court denied Valentine's motion to suppress, finding probable cause existed to search Valentine's car for contraband based on the totality of the circumstances, including the traffic violation, the odor of marijuana coming from the vehicle, and Valentine's admission that he smoked marijuana earlier in the evening. (Ex. A to Op. Br.).

Valentine now argues that the Superior Court erred by denying his motion to suppress the evidence obtained from the search of his vehicle. (Op. Br. at 24-48). According to Valentine, his rights were violated under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 6 of the Constitution of the State of Delaware, because the smell of marijuana coming from his vehicle was insufficient to create the requisite probable cause for the police to conduct a warrantless search of his vehicle due to Delaware's recent decriminalization of marijuana. (*Id.*). Valentine's claims are unavailing.

The Fourth and Fourteenth Amendments of the United State Constitution[44]

[44] *See* U.S. Const., amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"). *See also West v. State*, 143 A.3d 712, 715-16 (Del. 2016) ("The essential purpose of Fourth Amendment proscriptions is to impose a standard of reasonableness upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions.") (internal quotations omitted).

and Article I, Section 6 of the Delaware Constitution[45] protect citizens from unreasonable searches and seizures. These constitutional limitations generally require the police to obtain a warrant before conducting a search.[46] However, that requirement is subject to several judicially-created exceptions, including the "automobile exception."[47] The "automobile exception" permits law enforcement officers to search an automobile without a warrant if there is probable cause to believe that the vehicle contains contraband or evidence of criminal activity.[48] Probable cause is determined from the perspective of an objective law enforcement officer in light of the totality of the circumstances known to that officer at the time the search was conducted.[49] It is well established that the smell of marijuana alone is sufficient to constitute probable cause for a warrantless search, as long as the odor is articulable and particularized.[50]

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[45] Del. Const., art. I, § 6 ("The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures.").

[46] *Ortiz v. State*, 2004 WL 2741185, at *2 (Del. Nov. 16, 2004).

[47] *Id.*, at *2-3.

[48] *Tann v. State*, 21 A.3d 23, 27 (Del. 2011) (discussing *Arizona v. Gant*, 556 U.S. 332 (2009)); *Hall v. State*, 981 A.2d 1106, 1114 (Del. 2009); *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985) (citing *Carroll v. United States*, 267 U.S. 132, 153-54 (1925)); *United States v. Burton*, 288 F.3d 91, 100 (3d Cir. 2002) (citing *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)).

[49] *Ortiz*, 2004 WL 2741185, at *3.

[50] *Law v. State*, 2018 WL 2024868, at *2 (Del. May 17, 2018); *Fowler v. State*, 2016 WL 5853434, at *1 (Del. Sept. 29, 2016); *State v. Seth*, 2017 WL 2616941, at *2 (Del. Super. Ct. June 16, 2017); *State v. Faulkner*, 2017 WL 5905576, at *2 (Del.

Here, police stopped the vehicle because Valentine was driving over 30 miles per hour above the posted speed limit. Relying on *Fowler v. State*,[51] the Superior Court found probable cause existed to search Valentine's car for contraband based on the totality of the circumstances, including the traffic violation, the odor of marijuana coming from the vehicle,[52] and Valentine's admission that he smoked marijuana earlier in the evening. (Ex. A to Op. Br.).

Valentine argues that the smell of marijuana alone could not provide the requisite probable cause for the police to search Valentine's vehicle because the drug possession statutes were recently amended to decriminalize the possession or private use of a personal use quantity of marijuana. (Op. Br. at 24-48). Valentine's argument lacks merit.

First, Valentine ignores that possession of marijuana in any amount, whether a "personal use quantity" or not, remains illegal under Delaware law.[53] Second, the

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Super. Ct. Nov. 30, 2017); *State v. Dewitt*, 2017 WL 2209888, at *2 (Del. Super. Ct. May 18, 2017); *United States v. Harrison*, 2018 WL 1325777, at *2 (D. Del. Mar. 15, 2018); *United States v. Ramos*, 443 F.3d 304, 308 (3d Cir. 2006).

[51] 2016 WL 5853434.

[52] Trooper Lawson testified that he detected a strong marijuana odor from inside the vehicle, and he was familiar with the smell as a result of his experience and training. (A120-22). Only after smelling the marijuana did Trooper Lawson conduct a search of the vehicle. (*Id.*).

[53] *State v. Murray*, 158 A.3d 476, 482-83 (Del. Super. Ct. 2017); *see also* 16 *Del. C.* § 4764(c) (2015) ("Any person [who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter] shall be

plain language of 16 *Del. C.* § 4764(h) makes clear that the General Assembly's decriminalization of possession or private use of marijuana in a personal use quantity in 2015 was not intended to change Delaware's laws on probable cause and reasonable articulable suspicion. Specifically, section 4764(h) provides that:

> Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure.[54]

The role of the judiciary in interpreting a statute is to determine and give effect to the legislature's intent.[55] When the statute is unambiguous, then its plain language controls.[56] As this Court has reminded:

> [W]e do not sit as an überlegislature to eviscerate proper legislative enactments. It is beyond the province of the courts to question the policy or wisdom of an otherwise valid law. Rather we must take and apply the law as we find it, leaving any desirable changes to the General Assembly.[57]

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assessed a civil penalty of $100 for the first offense."). Under the Delaware Medical Marijuana Act ("DMMA"), medical marijuana cardholders may assert a medical purpose for using marijuana as a defense to any prosecution of an offense involving marijuana intended for the patient's medical use under certain circumstances. 16 *Del. C.* § 4913A. Valentine did not assert such a defense below.

[54] 16 *Del. C.* § 4764(h); *see also* Synopsis to House Amend. No. 3 to H.B. 39, 148th Gen. Assembly ("The amendment clarifies that this change to the law is not intended to affect search and seizure law as it currently exists in the State.") *available at* https://legis.delaware.gov/BillDetail?legislationId=25081.

[55] *Murray*, 158 A.3d at 482.

[56] *Id*.

[57] Sheehan v. Oblates of St. Francis de Sales, 15 A.3d 1247, 1259 (Del. 2011).

Valentine also relies on a memorandum issued by the State Prosecutor to the Delaware Chiefs of Police one week before House Bill 39 took effect in December 2015, claiming that the Attorney General itself acknowledged that "[o]fficers must recognize that the designation of some simple possession offenses as civil may impact the scope of an investigation" and instructed law enforcement officers that an investigation may continue if "the facts and circumstances surrounding the encounter prompt a reasonable suspicion of criminal activity (*i.e.*, possession of more than a 'personal use quantity' of marijuana)." (Op. Br. at 45). Valentine's reliance on this document is misplaced, however. The December 2015 memorandum was an internal memorandum designed to provide guidance to law enforcement officers, and does not modify 16 *Del. C.* § 4764, or create any case law or constitutional rights. Moreover, the memorandum notes that "HB 39 explicitly states that the legislative changes do not impact any procedures regarding search and seizure," and "an officer may engage in an investigation where the facts and circumstances, coupled with the inferences she may rationally draw from those facts, support the officer's belief that a person possesses *any* quantity of marijuana." (A105 (emphasis added)).

Valentine further claims that this Court's decision in *Fowler v. State*, which was relied on by the Superior Court, is inapposite to this case, because the defendant in that case was arrested prior to the General Assembly's decriminalization of

marijuana and because the Court described marijuana in that case as "a *typically* illegal substance *particularly* when used in a moving vehicle." (Op. Br. at 46). The decriminalization of marijuana, however, does not affect the vitality of well-established precedent, including *Fowler*. Even if marijuana has been decriminalized in some instances in Delaware, possessing and using marijuana, in any amount, is still a violation of Delaware law, and thus illegal.[58] Moreover, the General Assembly has made clear that civil violation penalties are limited to possessing marijuana in personal quantities and consuming marijuana in certain settings specified by the statute.[59] In addition, the statute explicitly states that "[n]othing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure."[60] Furthermore, in *Law*, a recent case where the defendant was arrested *after* the General Assembly's December 2015 decriminalization of personal use quantities of marijuana, this Court reaffirmed that the smell of marijuana *alone* amounts to probable cause to conduct a warrantless search of a vehicle.[61]

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[58] *Murray*, 158 A.3d at 482; 16 *Del. C.* § 4764.

[59] 16 *Del. C.* § 4764(c).

[60] 16 *Del. C.* § 4764(h).

[61] *Law*, 2018 WL 2024868, at *2 (holding that the Superior Court did not err in denying defendant's motion to suppress evidence seized from November 2016 search of vehicle; recognizing, under *Fowler*, that the odor of marijuana, "an illegal drug," is sufficient to constitute probable cause for the search of a car); *see also Seth*, 2017 WL 2616941, at *2-3 ("The smell of marijuana also created probable cause for

Valentine also claims that more than the odor of marijuana is required to establish probable cause under the Delaware Constitution, and thus *Fowler* is distinguishable, because this Court in that case only decided whether the odor of marijuana creates probable cause under the United States Constitution. (Op. Br. at 29-36). According to Valentine, the Delaware Constitution can provide different and broader protections than those guaranteed by the United States Constitution, and "the shifting attitudes of Delaware's citizens in their support for the legalization of marijuana furnishes grounds to expand the protections afforded to Delawareans under the Constitution of this State." (*Id.* at 29). Valentine also claims that "the General Assembly's passage of the Medical Marijuana Act in 2011 and subsequent decriminalization of possession of personal use quantities of marijuana in 2015 lessens the likelihood that the odor of marijuana alone predicts criminality, as mere possession of the substance no longer constitutes a crime in the State of Delaware." (*Id.* at 30). Valentine is again mistaken.

The General Assembly's decriminalization of possession of marijuana in a personal use quantity did not change Delaware's laws on probable cause and reasonable articulable suspicion. This Court has recognized that "police may conduct a warrantless search of an automobile if they have probable cause to believe

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[the December 2016 vehicle] search, especially combined with Mr. Seth's admission that he had smoked marijuana recently.").

that the vehicle contains evidence of criminal activity," under the "automobile exception" to the warrant requirement in the Fourth Amendment.[62] And, this Court has recognized that the odor of marijuana alone is sufficient to constitute probable cause for the search of a car.[63] Delaware courts have never held that additional exigent circumstances are required for vehicle searches.

Furthermore, Valentine ignores that possession of marijuana in any amount, whether a "personal use quantity" or not, remains illegal under Delaware law.[64] Valentine also overlooks that his argument is at odds with the plain language of 16 *Del. C.* § 4764, and the statute's legislative history, which explicitly recognize that the change in the penalty for possessing marijuana in a personal use quantity does not affect a defendant's constitutional rights.[65]

Valentine also argues that "Trooper Lawson took no steps to ascertain whether Valentine was in lawful possession of marijuana for medical purposes prior to searching the vehicle." (Op. Br. at 44). The assertion of a medical purpose for using

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[62] *Caldwell v. State*, 780 A.2d 1037, 1045, n. 11 (Del. 2001).

[63] *Law*, 2018 WL 2024868, at *2; *Fowler*, 2016 WL 5853434, at *1; *see also Seth*, 2017 WL 2616941, at *2; *Faulkner*, 2017 WL 5905576, at *2; *Dewitt*, 2017 WL 2209888, at *2; *Harrison*, 2018 WL 1325777, at *2; *Ramos*, 443 F.3d at 308.

[64] *Murray*, 158 A.3d at 482-83; *see also* 16 *Del. C.* § 4764(c) (2015). Valentine also did not assert a defense below that he was a medical marijuana cardholder under 16 *Del. C.* § 4913A.

[65] 16 *Del. C.* § 4764(h); Synopsis to House Amend. No. 3 to H.B. 39, 148th General Assembly.

marijuana is an affirmative defense, however, under the DMMA.[66] Thus, there is no requirement that the police inquire whether the individual has a medical marijuana card. Moreover, offering an innocent explanation for the odor of marijuana does not prevent law enforcement from considering it in determining reasonable articulable suspicion or probable cause. Marijuana possession, except in limited circumstances, remains illegal in Delaware, and smoking marijuana and driving while under the influence of marijuana are illegal under the DMMA.[67] As this Court has found, in the context of a probable cause determination, "[t]he possibility that there may be a hypothetically innocent explanation for each of several facts revealed during the course of an investigation does not preclude a determination that probable cause exists."[68]

In *State v. Senna*,[69] the Vermont Supreme Court considered a similar argument related to membership on a medical marijuana registry and its impact on law enforcement's ability to search a suspect's residence. The *Senna* Court concluded "the trial court properly considered the odor of fresh marijuana emanating

[66] 16 *Del. C.* § 4913A. There is no evidence that Valentine had a medical marijuana card, and Valentine did not assert such a defense below.

[67] *Murray*, 158 A.3d at 482; 16 *Del. C.* § 4764; 16 *Del. C.* § 4904A.

[68] *Lambert v. State*, 110 A.3d 1253, 1256 (Del. 2015) (citing *State v. Maxwell*, 624 A.2d 926, 928-30 (Del. 1993)).

[69] 79 A.3d 45 (Vt. 2013).

from defendant's home in assessing probable cause to search his residence. . . [T]he fact that Vermont has a registry of patients who are exempt from prosecution for possession or cultivation of marijuana does not undermine the significance of the smell of marijuana as an indicator of criminal activity."[70]

In arguing that the odor of marijuana alone does not create probable cause to conduct a warrantless search, Valentine relies on decisions by other states that have decriminalized marijuana. (Op. Br. at 37-44). Valentine primarily relies on *Commonwealth v. Cruz*[71] and *Commonwealth v. Overmyer*,[72] which held the odor of burnt or unburnt marijuana alone does not constitute probable cause to search a vehicle in the wake of Massachusetts's 2008 ballot initiative decriminalizing possession of one ounce or less of marijuana. (*Id.*). According to Valentine, "[j]ust as the Massachusetts decriminalization statute required police to point to specific, articulable facts that a criminal amount of marijuana was present in a vehicle to give rise to probable cause, so too must the Delaware statute." (Op. Br. at 44). Valentine, ignores, however, that, unlike Massachusetts's statute, Delaware's statute

[70] *Id.* at 50-51.

[71] 945 N.E.2d 899 (Mass. 2011).

[72] 11 N.E.3d 1054 (Mass. 2014).

specifically provides that "[n]othing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure."[73]

Valentine also relies on *Lefebvre v. State*,[74] in support of his claim that the odor of marijuana alone does not amount to probable cause to search a vehicle. *Lefebvre* is inapposite, however. The issue in *Lefebvre* was not whether there was probable cause to conduct a vehicle search under the automobile exception. Rather, in *Lefebvre*, this Court addressed whether a traffic violation combined with an odor of alcohol, standing alone, provided probable cause to arrest someone for a DUI offense.[75] Further, alcohol is not an illegal substance under Delaware law, like marijuana.

Valentine also claims that there was no factual support in the record for the Superior Court's finding that probable cause for the search was also supported by Valentine's own admission to having smoked marijuana earlier in the evening. (Op. Br. at 47). In making this argument, Valentine ignores that, although Trooper Lawson could not remember at the hearing whether Valentine made an admission to smoking marijuana prior to searching the vehicle, (A121, A124-25), the record supports the Superior Court's finding. Specifically, the record shows that, prior to

[73] 16 *Del. C.* § 4764(h); *compare* Mass. Gen. Laws ch. 94C, § 32L.

[74] 19 A.3d 287 (Del. 2011).

[75] *Id.* at 293.

the search, Valentine advised Trooper Lawson that "I smoked earlier."[76] (A41). In any case, the odor of marijuana, alone, constitutes probable cause to search Valentine's vehicle without a warrant.

In addition, the search was valid as a search incident to a lawful arrest.[77] Valentine had committed a traffic violation by operating his vehicle over 30 miles per hour above the posted speed limit, in violation of 21 *Del. C.* § 4169, for which he could be arrested pursuant to 21 *Del. C.* § 701(a)(1).[78] Trooper Lawson also had probable cause to arrest Valentine for Consumption of Marijuana, in violation of 16 *Del. C.* § 4764(d), and Driving a Vehicle Under the Influence of Drugs, in violation

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[76] Trooper Lawson's Affidavit of Probable Cause was part of the record before the Superior Court. *See* A125 (asking court to consider all of exhibits attached to motion to suppress, including Affidavit of Probable Cause); *see also* A124-25 (parties agreed at suppression hearing that Valentine told Trooper Lawson prior to the search that he had smoke earlier).

[77] Although the Superior Court did not consider whether the search was valid as a search incident to a lawful arrest, this Court is free to affirm the Superior Court's decision "on the basis of a different rationale than that which was articulated by the trial court." *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995). *See also Colon v. State*, 900 A.2d 635, 638 n.12 (Del. 2006) ("While the judge articulated a different rationale for his ruling in this case, we may affirm on grounds other than those relied upon by the judge." (citations omitted)).

[78] *Caldwell*, 780 A.2d at 1051, n.33; *Traylor v. State*, 458 A.2d 1170, 1174 (Del. 1983). Although the State ultimately did not prosecute Valentine for speeding, it does not change the fact that Trooper Lawson had probable cause when he extended the search beyond the bounds of an ordinary traffic stop.

of 21 *Del. C.* § 4177.[79] As a result, Trooper Lawson had grounds to lawfully search Valentine and the entire passenger compartment of the car he was driving.[80]

[79] *See Ramos*, 443 F.3d at 308 ("It is well settled that smell of marijuana alone, if articulable and particularized, may establish . . . probable cause."); *Jenkins v. State*, 970 A.2d 154, 158-59 (Del. 2009) (noting defendant's behavior and strong marijuana odor were sufficient to establish probable cause to arrest defendant for driving under the influence and possession of marijuana). Although the State ultimately did not prosecute Valentine for Driving Under the Influence or Consumption of Marijuana, it does not change the fact that Trooper Lawson had probable cause when he extended the search beyond the bounds of an ordinary traffic stop. *See id.*

[80] *Ortiz*, 2004 WL 2741185, *2-3; *New York v. Belton*, 453 U.S. 454, 460 (1981).

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

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Dated: June 11, 2018

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMONT VALENTINE,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 15, 2018
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 8,347 words, which were counted by Microsoft Word 2016.

Dated: June 11, 2018 /s/ Carolyn S. Hake