



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN WIGGINS, )  
 )  
 Defendant-Below, )  
 Appellant, )  
 )  
 v. ) No. 46, 2019  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff-Below, )  
 Appellee. )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

**STATE'S ANSWERING BRIEF**

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## NATURE OF PROCEEDINGS

Darren Wiggins was arrested on February 22, 2018.<sup>1</sup> A grand jury returned an indictment against Wiggins on April 23, 2018, and then a superseding indictment on May 21, 2018.<sup>2</sup> Wiggins faced charges of aggravated possession of phencyclidine (“PCP”), possession of heroin with an aggravating factor, possession of cocaine with an aggravating factor, and possession of marijuana.<sup>3</sup>

On June 27, 2018, Wiggins filed a motion to suppress.<sup>4</sup> The Superior Court held a suppression hearing on August 3, 2018, and denied the motion.<sup>5</sup>

The case proceeded to a jury trial on September 5, 2018.<sup>6</sup> At the close of the State’s case-in-chief, Wiggins moved for judgment of acquittal on the charge of aggravated possession of PCP.<sup>7</sup> The court denied the motion.<sup>8</sup> Wiggins then requested an instruction for the lesser-included offense, (simple) possession of

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<sup>1</sup> A001 at D.I. 1. “D.I. \_\_\_” refers to item numbers on the Superior Court Criminal Docket in *State v. Wiggins*, I.D. No. 1802014575, included in the Appendix to Appellant’s Opening Brief at A001–06.

<sup>2</sup> A002–03 at D.I. 6, 12.

<sup>3</sup> A007–08.

<sup>4</sup> A003 at D.I. 16.

<sup>5</sup> A004 at D.I. 19.

<sup>6</sup> A004–05 at D.I. 20–24; A009.

<sup>7</sup> A004 at D.I. 24; A026–28.

<sup>8</sup> A004 at D.I. 24; A026–28.

PCP.<sup>9</sup> The court granted Wiggins’s request and charged the jury accordingly.<sup>10</sup>

The jury found Wiggins guilty of all indicted charges.<sup>11</sup> The court revoked his bail and ordered a pre-sentence investigation.<sup>12</sup>

On October 16, 2018, the State filed a petition to declare and sentence Wiggins as a habitual offender.<sup>13</sup> The Superior Court granted the State’s petition on January 18, 2019, and sentenced Wiggins: (i) for aggravated possession of PCP, as a habitual offender, to 15 years at Level V incarceration, suspended after 3 years and 9 months for 6 months at Level IV partial confinement and then 18 months at Level III probation; (ii) for possession of heroin, to 12 months at Level V, suspended for 12 months at Level II probation; and (iii) for possession of cocaine, to 12 months at Level V, suspended for 12 months at Level II.<sup>14</sup>

Wiggins filed a timely notice of appeal on February 4, 2019. He filed an Opening Brief on May 21, 2019. This is the State’s Answering Brief.

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<sup>9</sup> A029–30.

<sup>10</sup> A029–30, A036.

<sup>11</sup> A004 at D.I. 24; A040.

<sup>12</sup> A004 at D.I. 24; A040.

<sup>13</sup> A004 at D.I. 26.

<sup>14</sup> Opening Br. Ex. B at 1–2; A005–06 at D.I. 27–28.

## **SUMMARY OF ARGUMENT**

I. The Appellant's argument is denied. The State presented sufficient evidence at trial to convict Wiggins of aggravated possession of PCP. Wiggins possessed, in a vehicle, a vial containing liquid PCP and brown chunks floating within it. The vial's contents constituted a mixture under an ordinary understanding of the term. That mixture weighed 17.651 grams, surpassing the minimum weight required to prove the charge.

## STATEMENT OF FACTS

On February 22, 2018, at about 1:15 a.m., the Delaware State Police (“DSP”) pulled over a vehicle for a tint violation.<sup>15</sup> Three or four people were inside the car, including passenger Darren Wiggins.<sup>16</sup> Detective Patrick McAndrew searched electronic records to determine if any of the occupants had outstanding warrants and learned that Wiggins had four.<sup>17</sup> He relayed the information to Detective Matthew Radcliffe, who removed Wiggins from the vehicle and arrested him.<sup>18</sup>

Detective Radcliffe searched Wiggins incident to arrest.<sup>19</sup> In Wiggins’s pocket, he found a bag of suspected marijuana and, in his groin area, he found: (i) a vial of suspected PCP; (ii) two bags of suspected crack cocaine; and (iii) more than two dozen bags of suspected heroin.<sup>20</sup>

Heather Moody, a forensic chemist at the Division of Forensic Science (“DFS”), examined the items recovered from Wiggins.<sup>21</sup> The vial contained an

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<sup>15</sup> A013–14.

<sup>16</sup> A015.

<sup>17</sup> A016, A018.

<sup>18</sup> A013.

<sup>19</sup> A013.

<sup>20</sup> A014, A023.

<sup>21</sup> A020, A022–24.



amber liquid with brown chunks floating in it.<sup>22</sup> The entire contents of the vial weighed 17.651 grams.<sup>23</sup> Moody tested a sample of the liquid and found it contained PCP.<sup>24</sup> Moody did not identify or separately weigh the brown chunks floating in the liquid.<sup>25</sup> She also tested the substances in the bags and found they contained: (i) marijuana; (ii) cocaine; and (iii) heroin and fentanyl.<sup>26</sup>

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<sup>22</sup> A024, A032–33.

<sup>23</sup> A023, A025.

<sup>24</sup> A022, A024.

<sup>25</sup> A024.

<sup>26</sup> A023–24.

## ARGUMENT

### I. WIGGINS POSSESSED A MIXTURE THAT CONTAINED PCP AND WEIGHED 15 GRAMS OR MORE.

#### Question Presented

Did the State present sufficient evidence at trial to support a finding that Wiggins possessed at least 15 grams of a mixture containing PCP?

#### Standard and Scope of Review

This Court reviews the denial of a motion for judgment of acquittal *de novo* to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all elements of the crime.<sup>27</sup> In making this inquiry, the Court does not distinguish between direct and circumstantial evidence.<sup>28</sup>

#### Merits of Argument

The charge of aggravated possession, as indicted, required proof that Wiggins possessed PCP, or any mixture containing PCP, in a Tier 3 quantity (15

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<sup>27</sup> *Ways v. State*, 199 A.3d 101, 106–07 (Del. 2018); *McNulty v. State*, 655 A.2d 1214, 1216 n.8 (Del. 1995); *Davis v. State*, 453 A.2d 802, 803 (Del. 1982).

<sup>28</sup> *Ways*, 199 A.3d at 106–07; *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).

grams or more) and in a vehicle.<sup>29</sup> Wiggins claims the State failed to prove the weight element.<sup>30</sup> His claim is unavailing.

During a traffic stop, DSP found Wiggins seated in the vehicle.<sup>31</sup> A detective removed Wiggins from the vehicle and searched him incident to arrest on outstanding warrants.<sup>32</sup> The detective found a vial hidden in Wiggins's groin area.<sup>33</sup> The vial contained amber liquid with brown chunks floating in it.<sup>34</sup> A DFS chemist found the contents of the vial weighed 17.651 grams.<sup>35</sup> The chemist then tested a sample of the liquid and found it contained PCP.<sup>36</sup> With such evidence, a jury could (and did) find beyond a reasonable doubt that Wiggins possessed, in a vehicle, at least 15 grams of a mixture containing PCP.<sup>37</sup>

Wiggins rests his argument on the brown chunks floating in the liquid PCP.<sup>38</sup> The DFS chemist did not weigh the brown chunks and liquid separately

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<sup>29</sup> 16 *Del. C.* §§ 4751A(1)c., 4751C(3)f., 4752(4); A007.

<sup>30</sup> Opening Br. 7.

<sup>31</sup> A013.

<sup>32</sup> A013.

<sup>33</sup> A014.

<sup>34</sup> A024, A032–33.

<sup>35</sup> A022–23.

<sup>36</sup> A022, A024.

<sup>37</sup> *See* A040.

<sup>38</sup> Opening Br. 7–8; A026–28.

and testified only to their combined weight.<sup>39</sup> Accordingly, the State argued to the jury that the full contents of the vial were a mixture containing PCP, which satisfied the weight requirement.<sup>40</sup> Wiggins disagrees, contending: “Because the chunky substances could be easily distinguished and separated from the liquid, the two substances were not a mixture and, thus, the weight of the chunky substances should not have been included for purposes of determining Tier [3] weight.”<sup>41</sup>

The Delaware Uniform Controlled Substances Act does not define the term *mixture*.<sup>42</sup> Where a statutory term is not defined, the term has its common and ordinary meaning.<sup>43</sup> Merriam-Webster defines *mixture* as “a portion of matter consisting of two or more components in varying proportions that retain their own

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<sup>39</sup> A024.

<sup>40</sup> A032–34.

<sup>41</sup> Opening Br. 8.

<sup>42</sup> See 16 *Del. C.* § 4701 (providing definitions for many terms, but not *mixture*).

<sup>43</sup> See, e.g., 1 *Del. C.* § 303 (“Words and phrases . . . shall be construed according to the common and approved usage of the English language.”); 11 *Del. C.* § 221(c) (“If a word used in this Criminal Code is not defined herein, it has its commonly accepted meaning . . . .”); *Rogers v. State*, 2012 WL 983198, at \*2 (Del. Mar. 20, 2012) (stating, when a statute does not define terms, “the ‘commonly accepted meaning’ of those terms should be employed”); *Pennewell v. State*, 977 A.2d 800, 801 (Del. 2009) (stating a term not defined in the Code “must be given its common and ordinary meaning”).

properties.”<sup>44</sup> Oxford defines *mixture* as a “combination of different things in which the component elements are individually distinct” or the “product of the random distribution of one substance through another without any chemical reaction.”<sup>45</sup>

Here, DSP recovered a vial from Wiggins in which one substance (brown chunks) was distributed through another (amber liquid). The solid chunks and the liquid retained distinct physical identities while combined. The vial’s contents thus constituted a *mixture*, as that term is commonly understood.

Wiggins argues otherwise, contending: (i) the brown chunks were “visually and physically distinct” from the liquid; (ii) the brown chunks were “easily separated from the liquid”; and (iii) the PCP was not “diffused among the particles of the chunks.”<sup>46</sup> Wiggins misapprehends the ordinary understanding of *mixture*.

First, the fact that the chunks and liquid were physically distinct from each other *supports* the conclusion that their combination is a mixture. In mixtures, the components “retain their own properties.”<sup>47</sup> Second, whether the chunks and

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<sup>44</sup> Definition of *Mixture*, *Merriam-Webster*, [https://www.merriam-webster.com/dictionary/mixture?utm\\_campaign=sd&utm\\_medium=serp&utm\\_source=jsonld](https://www.merriam-webster.com/dictionary/mixture?utm_campaign=sd&utm_medium=serp&utm_source=jsonld) (last visited June 10, 2019).

<sup>45</sup> Definition of *Mixture*, *Lexico*, <https://www.lexico.com/en/definition/mixture> (last visited June 10, 2019).

<sup>46</sup> Opening Br. 15.

<sup>47</sup> Definition of *Mixture*, *supra* note 44.

liquid were visually distinct is beside the point. The degree of visual distinction will vary mixture by mixture: for example, larger components will be easier to see, and components that disperse homogeneously will be more difficult to discern. Third, Wiggins's suggestion that the brown chunks could be easily separated from the liquid, if true, does not affect whether, as combined, they constituted a *mixture*. The ease or difficulty in separating components is not a defining characteristic of a *mixture*. Fourth, Wiggins's argument that the liquid was not diffused through the chunks ignores the fact that the chunks were dispersed through the liquid.

Wiggins attempts to narrow the definition of *mixture* beyond its common understanding by introducing concepts of marketability and usability.<sup>48</sup> Wiggins draws these concepts from a line of federal cases that restrict the weight of drug mixtures, for purposes of federal statutes and sentencing guidelines, to its marketable or usable components. Prior decisions of this Court, however, have upheld convictions based on the weight of drug mixtures without requiring anything of the other substances in the mixture.<sup>49</sup> Wiggins asks this Court to deviate from this approach. It should not.

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<sup>48</sup> Opening Br. 12–13.

<sup>49</sup> *Lloyd v. State*, 534 A.2d 1262, 1266 (Del. 1987) (affirming a conviction for 27.45-gram mixture containing 2.77 grams of methamphetamine and other unidentified powder); *Simmons v. State*, 1987 WL 37998, at \*1 (Del. July 2, 1987) (same); *Shy v. State*, 459 A.2d 123, 125 (Del. 1983) (affirming conviction for 22-gram mixture contained 0.64 grams of heroin and other unidentified powder).

Wiggins’s case law represents just one-half of a Circuit split interpreting the U.S. Supreme Court’s decision in *Chapman v. United States*.<sup>50</sup> The petitioners in *Chapman* argued that a medium used to carry LSD, blotter paper, should not count toward the weight of the drug for sentencing purposes.<sup>51</sup> The applicable statute provided an elevated penalty for offenders who dealt in “1 gram or more of a mixture or substance containing a detectable amount” of LSD.<sup>52</sup> The petitioners argued that the words *mixture or substance* were ambiguous and Congress could not have intended to base sentences on the weight of the carrier medium rather than the drug.<sup>53</sup>

The U.S. Supreme Court rejected the petitioners’ argument.<sup>54</sup> The word *mixture* was not ambiguous: because the statute and sentencing guidelines did not specifically define it, the term had its ordinary meaning.<sup>55</sup> Under an ordinary understanding of the term, LSD in a bottle would not be a mixture because it “easily distinguished from, *and separated from*, such a container,”<sup>56</sup> but LSD on

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<sup>50</sup> 500 U.S. 453 (1991).

<sup>51</sup> *Id.* at 455–56.

<sup>52</sup> *Id.* at 457.

<sup>53</sup> *Id.* at 458–59.

<sup>54</sup> *Id.* at 459.

<sup>55</sup> *Id.* at 461–62 (citing dictionary definitions).

<sup>56</sup> *Id.* at 462–63 (emphasis added).

blotter paper is a mixture because it diffuses among the fibers of the paper.<sup>57</sup> This result was consistent with congressional intent.<sup>58</sup> Congress sought to penalize retail traffickers as severely as wholesale distributors because the dealers “keep the street markets going.”<sup>59</sup> Therefore, Congress set the penalties by “the weight of the drugs in whatever form they were found[—]cut or uncut, pure or impure, ready for wholesale or ready for distribution at the retail level.”<sup>60</sup> It was rational both to tie penalties to tools of the trade (*e.g.*, blotter paper) and to “avoid arguments about the accurate weight of pure drugs which might have been extracted.”<sup>61</sup>

The Circuit Courts of Appeal split on how to interpret and apply *Chapman*. Several Circuits read *Chapman* as setting forth broad principles on a market-oriented approach and limited the definition of *mixture* to the usable and marketable materials therein.<sup>62</sup> Other Circuits read *Chapman* as narrowly focused on facts before it (LSD and blotter paper) and not intended to limit the weight of mixtures to their usable and marketable materials.<sup>63</sup> For example, in *United States*

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<sup>57</sup> *Id.* at 462.

<sup>58</sup> *Id.* at 461.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 466.

<sup>62</sup> *See United States v. Killion*, 7 F.3d 927, 932 & n.9 (10th Cir. 1993) (citing cases).

<sup>63</sup> *Id.* at 933 & n.10 (citing cases).



*v. Mahecha-Onofre*,<sup>64</sup> cocaine had been mixed into the fabric of a suitcase for smuggling, and the First Circuit declined to discount the weight of that suitcase. Justice White observed that the Circuits were “deeply split on this issue.”<sup>65</sup>

Delaware should not abandoned settled case law on statutory construction (applying ordinary meanings to undefined terms) in favor of one-half of a Circuit split that construes federal law, especially on these facts. The brown chunks floating in Wiggins’s liquid PCP are akin to impurities in the drug. Adopting a marketability/usability limitation here would reduce the effective distinction between pure drugs and mixtures in the Code. In prior cases upholding the distinction, Delaware courts have not required any evidence about what the other

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<sup>64</sup> 936 F.2d 623, 626 (1st Cir. 1991) (“[T]he suitcase material obviously cannot be consumed; and the cocaine must be separated from the suitcase material before use. We do not believe, however, that this fact alone can make a difference to the outcome, for ‘ingestion’ would not seem to play a critical role in the definition of ‘mixture’ or ‘substance.’ Indeed, one reason why Congress and the Sentencing Commission have specified that courts not consider drug ‘purity’ in imposing sentence is that ‘weight’ and ‘purity’ both, roughly speaking, correlate with the seriousness of the crime. . . . Congress determined that the effort to determine purity is not worth the extra precision (in terms of correlating punishment with crime seriousness) that doing so might produce.”).

<sup>65</sup> *Sewell v. United States*, 507 U.S. 953 (1993) (White, J., dissenting), *denying cert. to United States v. Sherrod*, 964 F.2d 1501 (5th Cir. 1992). Nevertheless, the U.S. Supreme Court repeatedly denied cert to address it. *E.g., id.*; *Walker v. United States*, 506 U.S. 967 (1992) (White, J., dissenting) (“[I]n the last Term alone, we have declined to review this question on three separate occasions.”), *denying cert. to* 960 F.2d 409 (5th Cir. 1992). The U.S. Sentencing Commission responded by amending the guidelines to incorporate ideas from both sides of the split. *See U.S. Sentencing Guidelines Manual* § 2D1.1 cmt. n.1.

components of the mixture are or what their purpose is, relative to the drug.

Wiggins's approach would encourage "arguments about the accurate weight of pure drugs which might have been extracted," which *Chapman* sought to avoid.<sup>66</sup>

What Wiggins cannot avoid is that the contents of his vial constituted a mixture under the ordinary meaning of the term.

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<sup>66</sup> *Chapman v. United States*, 500 U.S. 453, 466 (1991).

## CONCLUSION

For all of the foregoing reasons, this Court should affirm the judgment of the Superior Court.

Respectfully submitted,

*/s/ Matthew C. Bloom*

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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.

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Date: June 20, 2019

/s/ Matthew C. Bloom