



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**NAIFECE HOUSTON,** )  
 )  
 Defendant-Below, )  
 Appellant, )  
 ) No. 12, 2020  
 v. )  
 )  
 )  
 **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 AND STAGE OF THE PROCEEDINGS

On April 15, 2019, a New Castle County grand jury returned an indictment charging Naifece Houston (“Houston”) with Tier 5 Possession of Cocaine, Tier 4 Drug Dealing (cocaine), Resisting Arrest, and Failure to Maintain a Traffic Lane. A001. On September 29, 2019, Houston filed a motion to suppress evidence, which the Superior Court denied after a hearing. A003, A005. After a stipulated bench trial, the court found Houston guilty of Aggravated Possession of Cocaine (Tier 5), Resisting Arrest, and Failure to Maintain a Traffic Lane.<sup>1</sup> On December 10, 2019, the court sentenced Houston to two years incarceration followed by probation and a \$25.00 fine. A217-18. Houston has appealed his convictions. This is the State’s Answering Brief.

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<sup>1</sup> The State entered a *nolle prosequi* on the remaining Drug Dealing charge. A005.

## **SUMMARY OF THE ARGUMENT**

I. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Houston's suppression motion. The Superior Court correctly permitted Detective Radcliffe to testify about an odor consistent with a large quantity of cocaine at the suppression hearing. Because the rules of evidence are relaxed during proceedings concerning preliminary issues of fact, the court properly considered Detective Radcliffe's testimony regarding his perception of an odor consistent with cocaine based on his extensive experience. In any event, police officers did not measurably extend the duration of the traffic stop. Houston refused to comply with Detective Radcliffe's instructions and ultimately fled from police. As such, Houston was responsible for extending the duration of his detention.

## STATEMENT OF FACTS

On January 29, 2019, Delaware State Police Detective Matthew Radcliffe (“Det. Radcliffe”) and his partner, Corporal Eric Saccomanno (“Cpl. Saccomanno”) were on patrol on Memorial Drive in New Castle County when Det. Radcliffe saw a car with Florida tags drift over the dividing line several times. A066-67. Det. Radcliffe was concerned that the driver of the car was impaired. A067. As the car turned onto Rt. 9, Det. Radcliffe activated his emergency lights and pulled the car over. A068.

Det. Radcliffe and Cpl. Saccomanno approached the car on the passenger side. A068. Houston was the sole occupant of the car. A068. When Cpl. Saccomanno asked Houston for his driving credentials, Det. Radcliffe noticed that Houston was “extremely nervous,” shaking and fumbling with the paperwork, and Houston was not speaking directly to Cpl. Saccomanno. A069. It appeared to Det. Radcliffe that Houston was “looking around as what I perceived to be more of an avenue of escape.” A069. Cpl. Saccomanno obtained Houston’s credentials and returned to the police vehicle to run Houston’s Pennsylvania license through the NCIC database. A070. While Cpl. Saccomanno conducted the NCIC inquiry, Det. Radcliffe remained with Houston. A070. Det. Radcliffe asked Houston whether he had been drinking, to which Houston replied he had not. A070. Det. Radcliffe did not detect an odor of alcohol when he interacted with Houston from the passenger side of

Houston's car. A070-72.

Det. Radcliffe returned to the police vehicle to check the status of Cpl. Saccomanno's NCIC inquiry, but "kept an eye on [Houston]." A071. As he was standing at the police vehicle, Det. Radcliffe observed Houston looking at him in the rearview mirror, then looking down at the gear selector and "looking at the area to what, again, I'm perceiving an avenue of escape." A071. Concerned that Houston was preparing to flee, Det. Radcliffe returned to Houston's car. Det. Radcliffe approached Houston's car on the driver's side, and when Houston lowered the driver's window, Det. Radcliffe "smelled a slight odor of a chemically smell that's consistent with me to an odor of cocaine." A072. According to Det. Radcliffe, a veteran police officer who has been involved in "hundreds if not thousands of cocaine-related arrests," in his experience, there is a detectable chemical odor associated with large quantities of cocaine. A091-92.

At that point, Det. Radcliffe asked Houston to step out of his car. A118. Houston complied, but "he was all [over] the place." Det. Radcliffe testified that Houston would not look at him and was checking his surroundings. A118. Houston's behavior and demeanor heightened Det. Radcliffe's concern that Houston would flee. A118. Det. Radcliffe asked Houston to cross his legs and lean against the car, but Houston uncrossed his legs. A118. According to Det. Radcliffe, he repeatedly asked Houston to cross his legs because Houston would not keep them



crossed, which indicated to Det. Radcliffe, “this guy [m]ight run from me.” A119. As Det. Radcliffe was speaking with Houston, another Delaware State Police detective arrived on the scene. A120. The detective looked into Houston’s open car window and observed a plastic bag protruding from a void under the console. A120. Det. Radcliffe testified that, in his experience, such a void is commonly used to conceal contraband and weapons. A121. When the trooper reapproached Det. Radcliffe and Houston, Houston ran. A121. After a brief chase, the officers, with some difficulty, subdued Houston and arrested him. A122-23.

The police towed Houston’s car and conducted an inventory, discovering a plastic bag containing a large quantity of suspected cocaine in the void of the console. A124. The suspected cocaine tested positive and weighed 133 grams. A204.

## **ARGUMENT**

### **I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED HOUSTON'S SUPPRESSION MOTION.**

#### **Question Presented**

Whether the Superior Court abused its discretion when it admitted testimony from a police officer regarding the odor of contraband emanating from Houston's car.

#### **Standard and Scope of Review**

This Court reviews the Superior Court's denial of a motion to suppress for abuse of discretion.<sup>2</sup>

#### **Merits of the Argument**

On appeal, Houston argues the Superior Court abused its discretion when it permitted Det. Radcliffe to testify that he detected an odor associated with large quantities of cocaine when he approached the driver's side door of Houston's car during a traffic stop. He also contends officers impermissibly extended the duration of the traffic stop. Houston's claims are unavailing.

D.R.E 1101 governs the applicability of the Rules of evidence in court

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<sup>2</sup> *Loper v. State*, 8 A.3d 1169, 1172 (Del. 2010) (citing *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001)).

proceedings. The rule provides, in part:

**(a) Rules applicable.** Except as otherwise provided in paragraph (b) and (c) of this Rule, these Rules apply to all actions and proceedings in all the courts of this State.

**(b) Rules inapplicable.** The Rules - except for those on privilege - do not apply to the following:

- (1) the court's determination under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) grand jury proceedings;
- (3) in preliminary hearings in criminal cases; and
- (4) miscellaneous proceedings such as:
  - extradition or rendition;
  - issuing an arrest warrant, criminal summons or search warrant;
  - sentencing;
  - granting or revoking probation;
  - detention hearing in criminal hearings;
  - considering whether to release on bail or otherwise; and
  - contempt proceedings in which the court may act summarily.<sup>3</sup>

In addition to the proceedings listed above, Delaware courts do not strictly apply the Rules of Evidence at suppression hearings.<sup>4</sup> The United States Supreme Court has made the reason for this clear, stating:

the interests at stake in a suppression hearing are of a lesser magnitude

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<sup>3</sup> D.R.E. 1101.

<sup>4</sup> See e.g., *State v. Brown*, 2010 WL 2878246, at \*2 (Del. Super. July 22, 2010); *State v. Cleveland*, 2006 WL 2441971, at \*3 (Del. Super. Aug. 16, 2006); *State v. Shutak*, 2017 WL 4339690, at \*1 (Del. Com. Pl. Sep. 29, 2017); *State v. Miller*, 2016 WL 6901336, at \*2 (Del. Comm. Pl. Nov. 15, 2016).

than those in the criminal trial itself. At a suppression hearing, the court may rely on hearsay and other evidence, even though that evidence would not be admissible at trial.<sup>5</sup>

Here, the suppression hearing was a proceeding to determine a preliminary question of fact governing the admissibility of evidence police discovered in Houston's car after a traffic stop. D.R.E. 1101 permitted the Superior Court's consideration of Det. Radcliffe's testimony regarding the odor he detected when he approached the driver's side of Houston's car. This Court can affirm on that basis alone.<sup>6</sup>

Even if this Court were to consider Houston's D.R.E. 702 argument, Det. Radcliffe's testimony regarding the odor associated with a large quantity of cocaine did not qualify as expert testimony. D.R.E. 702 addresses "expert" testimony, and provides: "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles

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<sup>5</sup> *United States v. Raddatz*, 447 U.S. 667, 679 (1980) (citing *United States v. Matlock*, 415 U.S. 164, 172–174 (1974); *Brinegar v. United States*, 338 U.S. 160, 172–174, (1949); F.R.E. 104(a), 1101(d)(1).

<sup>6</sup> *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.”<sup>7</sup> As the United States Supreme Court noted in *Daubert*: “[t]he subject of an expert's testimony must be ‘scientific ... knowledge.’ The adjective ‘scientific’ implies a grounding in the methods and procedures of science.”<sup>8</sup>

At the suppression hearing, Houston conceded that Delaware courts routinely consider police testimony regarding the presence of the odor of marijuana and alcohol when making a probable cause determination.<sup>9</sup> When pressed to distinguish Det. Radcliffe’s testimony regarding the presence of an odor associated with a large quantity of cocaine from testimony regarding marijuana or alcohol, Houston could only posit “[c]ocaine is not something that can be rationally perceived.”<sup>10</sup> The court rejected Houston’s D.R.E. 702 argument and concluded Det. Radcliffe was not an expert under the rule and a *Daubert* hearing was not required to determine the admissibility of his testimony regarding the odor associated with cocaine, finding:

There is no case in Delaware that says . . . expert testimony is required for testimony about an odor, chemical odor associated with cocaine. I note, and it’s commonplace, that nonexperts testify as to odor of alcohol, odor of marijuana without being required to be identified as

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<sup>7</sup> D.R.E. 702.

<sup>8</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-90 (1993) (quoting F.R.E. 702).

<sup>9</sup> A112-13.

<sup>10</sup> A113.

experts to be able to do the same.<sup>11</sup>

The court concluded Det. Radcliffe's testimony was not "based on scientific, technical or other specialized knowledge," thus D.R.E. 702 did not apply.<sup>12</sup>

This Court has rejected the Superior Court's characterization of a police officer's perceptions based on training and experience as D.R.E. 702 evidence requiring expert testimony at a suppression hearing. In *State v. Murray*,<sup>13</sup> a police officer testified at a suppression hearing regarding his belief that Murray was armed based on his training and experience.<sup>14</sup> The officer was trained to identify the characteristics of an armed gunman.<sup>15</sup> In an order granting Murray's suppression motion, the Superior Court acknowledged that the rules of evidence do not apply to preliminary questions of fact governing admissibility, but nonetheless suggested the officer's testimony was subject to the confines of D.R.E. 702.<sup>16</sup> This Court disagreed, stating:

[T]he [Superior Court] stated, or at least suggested, that the officer's testimony was not admissible under Delaware Rule of Evidence 702 because it was not based on sufficient facts or data or the product of

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<sup>11</sup> A114-15.

<sup>12</sup> A116.

<sup>13</sup> 213 A.3d 571 (Del. 2019).

<sup>14</sup> *Murray*, 213 A.3d at 575.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 576.

reliable principles and methods. When an officer testifies about something he has learned through his police training or through his police experience, however, a court cannot expect the testimony to be supported by a statistical analysis or a scientific study where there is no evidence that such an analysis or study exists. “[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior . . .”<sup>17</sup>

The result should be no different here. Det. Radcliffe’s testimony regarding the chemical odor associated with a large quantity of cocaine was not “scientific” as contemplated by D.R.E. 702.

After determining that Det. Radcliffe was not an expert under D.R.E. 702, the court concluded that his testimony could be properly considered under D.R.E. 701.<sup>18</sup> D.R.E. 701 permits a lay witness to testify in the form of an opinion when the opinion is rationally based on the witness’s perception; helpful to clearly understanding the witness’s testimony or to determining a fact in issue; and, not based on scientific, technical, or other specialized knowledge.”<sup>19</sup> Here, the court found Det. Radcliffe’s testimony was rationally based on his perceptions and would be “helpful to clearly understand [his] testimony or to determine a fact in issue.”<sup>20</sup> The court did not abuse

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<sup>17</sup> *Id.* at 580 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000)).

<sup>18</sup> A116.

<sup>19</sup> D.R.E. 701.

<sup>20</sup> A116.

its discretion in reaching the above conclusion.

Det. Radcliffe's testimony was helpful to the court's understanding of totality of the circumstances surrounding Houston's detention and arrest. The issue at the suppression hearing was whether police possessed reasonable articulable suspicion to detain Houston. "A determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts."<sup>21</sup> Det. Radcliffe's testimony regarding the chemical odor associated with a large amount of cocaine provided context to his observations, which the court was required to consider in its analysis.<sup>22</sup> In support of his argument, Houston cites *Seward v. State*<sup>23</sup> and *Norman v. State*.<sup>24</sup> His reliance on those cases is misplaced. In *Seward* and *Norman*, police officers identified a substance as a particular drug based on their familiarity and experience with drugs.<sup>25</sup> The drug identifications were offered at

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<sup>21</sup> *Jones v. State*, 745 A.2d 856, 861 (Del. 1999) (citations omitted).

<sup>22</sup> *See Murray*, 213 A.2d at 579.

<sup>23</sup> 723 A.2d 365 (Del. 1999).

<sup>24</sup> 968 A.2d 27 (Del. 2009).

<sup>25</sup> *Seward*, 723 A.2d at 372–73; *Norman*, 968 A.2d at 30.



trial as proof that the substances were, in fact, illegal drugs.<sup>26</sup> In other words, the officers' identifications of the substances as illegal drugs were used to establish an element of an offense at trial. That is not the case here. Det. Radcliffe's testimony regarding the chemical odor was not offered to prove that the substance found inside Houston's car was cocaine, it was offered as the detective's subjective interpretation of the objective facts at a suppression hearing for the court to determine whether the officers possessed reasonable suspicion to detain Houston. The Superior Court did not abuse its discretion when it considered Det. Radcliffe's testimony regarding the chemical odor.

Houston also argues that had the Superior Court excluded Det. Radcliffe's testimony, "it would have found that the authorities lacked the reasonable suspicion necessary to extend traffic stop beyond its original scope."<sup>27</sup> Because the Superior Court properly considered Det. Radcliffe's testimony, this Court need not reach the question of whether police measurably extended Houston's detention. In any event, Houston's argument is speculative at best. The Superior Court addressed Houston's argument and determined;

[L]ooking as to whether or not under *Dillard* and other case law there

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<sup>26</sup> *Id.*

<sup>27</sup> Op. Brf. at 33.

was a permissible continuing extension of the detention, I think there was. There hadn't been the issuance of a traffic ticket yet. There was a necessary period of time I believe, and I believe defense counsel conceded as much, for the officers to check to see if there are any outstanding warrants or capiases, that's standard and necessary procedure in any traffic stop, no matter, you know, what the circumstances of the traffic stop.<sup>28</sup>

The record demonstrates that Det. Radcliffe's interaction with Houston occurred contemporaneously with Cpl. Saccomanno running Houston's information in NCIC. As the Superior Court noted, Houston fled before officers could issue a traffic ticket or perform a K-9 sniff. Houston's flight preempted any further investigative activity that may have extended the traffic stop. As such, his argument fails.

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<sup>28</sup> A184-85.

## CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of convictions below and remand with directions to resentence Otis to life without probation or parole.

**/s/Andrew J. Vella**

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STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

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DATE: August 3, 2020