



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAQUAN WOMACK, )  
                        )  
Defendant-Below,    )  
Appellant,            )  
                        )  
v.                    )      No. 223, 2022  
                        )  
                        )  
STATE OF DELAWARE, )  
                        )  
Plaintiff-Below,    )  
Appellee.            )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

**STATE'S ANSWERING BRIEF**

Sean P. Lugg (No. 3518)  
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Dated: November 21, 2022

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## **NATURE AND STAGE OF THE PROCEEDINGS**

On June 19, 2020, New Castle County Police Department (“NCCPD”) officers arrested Raquan Womack.<sup>1</sup> A New Castle County grand jury, on September 8, 2020, returned an indictment charging Womack with Possession of a Firearm by a Person Prohibited (“PFBPP”), Possession of Ammunition by a Person Prohibited (“PABPP”), Carrying a Concealed Deadly Weapon (“CCDW”), Resisting Arrest, and Possession of Marijuana.<sup>2</sup> The Superior Court scheduled Womack’s trial to begin on September 27, 2021.<sup>3</sup>

On September 27, 2021, Womack filed a “Motion to File Out of Time and Motion to Suppress.”<sup>4</sup> Womack explained in his motion that this Court’s September 10, 2021 Opinion in *Juliano v. State*<sup>5</sup> prompted his late filing.<sup>6</sup> On September 28, 2021, before swearing the jury, the Superior Court heard evidence and argument pertaining to Womack’s motion to suppress.<sup>7</sup> The court denied Womack’s motion the following day.<sup>8</sup> After a two day trial, a jury found Womack guilty of PFBPP,

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<sup>1</sup> A35, 38.

<sup>2</sup> A1 at D.I. 1; A7-9.

<sup>3</sup> A2 at D.I. 13.

<sup>4</sup> A3 at D.I. 18; A11-13.

<sup>5</sup> 260 A.3d 619 (2021).

<sup>6</sup> A11.

<sup>7</sup> A33-49.

<sup>8</sup> A51-53.

PABPP, CCDW, and Resisting Arrest.<sup>9</sup> The Superior Court ordered a presentence investigation and, on June 3, 2022, sentenced Womack to twenty years of incarceration, suspended after five years for decreasing levels of probation.<sup>10</sup>

Womack appealed and filed an Opening Brief. This is the State's Answering Brief.

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<sup>9</sup> A4 at D.I. 24. The State dismissed the marijuana possession charge prior to trial. A3 at D.I. 17.

<sup>10</sup> Op. Brf. Ex. B; A4 at D.I. 28.

## **SUMMARY OF THE ARGUMENT**

I. Womack's Argument is DENIED. Womack does not contest that officers were justified in stopping the vehicle in which Womack was a passenger. Nor does he contest that, after interacting with the vehicle's driver and Womack himself, officers possessed probable cause to search the vehicle for evidence pertaining to marijuana. The officers' authority to search the vehicle extended to the vehicle, objects within the vehicle, and objects removed from the vehicle after probable cause was established. The officers were authorized to secure Womack during the stop and to handcuff him to avoid his flight or his removal of evidence from the scene. And, once the officers developed probable cause to search the vehicle, their authority to search extended to the bag Womack removed from the car. The fact that he removed the bag from the vehicle does not shield its contents from this valid automobile search. Thus, the Superior Court did not abuse its discretion in denying Womack's motion to suppress the loaded firearm found within the bag.

## **STATEMENT OF FACTS**

On June 15, 2020, New Castle County Police Department (“NCCPD”) Officer Hunt saw a vehicle, driven by Delliniel Jiminez, “with an unknown vehicle part dragging from the undercarriage” and “grinding on the pavement.”<sup>11</sup> Officer Hunt stopped the vehicle “[o]n Duncan Street and Eighth Avenue in the city of [ ] Wilmington.”<sup>12</sup> Officer Hunt approached the vehicle on the passenger side and observed two people in the car – the driver, Jiminez, and the front seat passenger, Womack.<sup>13</sup> “Both occupants were smoking cigarettes. And the front passenger was extremely nervous. He was taking shallow breaths and speaking very quietly.”<sup>14</sup> Officer Hunt explained that “[s]ubjects will light up cigarettes prior to police making contact with them [ ] to mask the odor of marijuana in the vehicle.”<sup>15</sup>

Officer Hunt asked Jiminez to step out of the car.<sup>16</sup> Jiminez “appeared nervous. His eyes were really glassy. And while speaking with him, [Officer Hunt] smelled marijuana on his person.”<sup>17</sup> Officer Hunt determined that Jiminez “had a

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<sup>11</sup> A35.

<sup>12</sup> A35.

<sup>13</sup> A36.

<sup>14</sup> A35.

<sup>15</sup> A35-36.

<sup>16</sup> A36.

<sup>17</sup> A36.

few capiases” and arrested him.<sup>18</sup> During the encounter, two other New Castle County Police Department officers, Officer Webb and Officer Canaan, assisted Hunt.<sup>19</sup>

While Officer Hunt engaged with Jiminez, Officer Webb remained at the vehicle with Womack.<sup>20</sup> Officer Webb, for his safety, asked Womack to exit the passenger seat of the car; Womack did so.<sup>21</sup> Shortly thereafter, Officer Webb permitted Womack to return to the passenger seat.<sup>22</sup> At this point, the officers were attempting to determine whether Womack could take the vehicle for Jiminez.<sup>23</sup> When Officer Hunt smelled “the odor of marijuana emanating from Mr. Jiminez’s person,” he informed Officer Webb who then began to search the car.<sup>24</sup> Prior to the search, Womack was again asked to exit the vehicle; this time he “grabbed the bag from the passenger floor board.”<sup>25</sup> Womack remained outside the vehicle under Officer Canaan’s supervision while Officer Webb searched the car.<sup>26</sup>

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<sup>18</sup> A36.

<sup>19</sup> A38.

<sup>20</sup> A36.

<sup>21</sup> A36.

<sup>22</sup> A36.

<sup>23</sup> A36.

<sup>24</sup> A36-37.

<sup>25</sup> A42. Womack did not remove the bag the first time he exited the vehicle.

<sup>26</sup> A37.

Approximately thirty seconds into his search, while Officer Canaan and Womack stood on the sidewalk a few feet from the vehicle, Officer Webb found “approximately two and a half grams of marijuana near the driver’s seat of the vehicle.”<sup>27</sup> Officer Webb reported his finding to Officer Canaan who then “attempted to detain Mr. Womack in handcuffs.”<sup>28</sup> Womack resisted Officer Canaan’s detention, pulled away, and fled on foot carrying the white bookbag he had removed from the car.<sup>29</sup>

After a brief chase, Womack fell, and the officers successfully took him into custody.<sup>30</sup> When officers captured him, Womack no longer possessed the bookbag.<sup>31</sup> The officers soon located the bag and found that it contained a loaded .38 Special Smith & Wesson revolver, Womack’s pay stub, and Womack’s credit and debit cards.<sup>32</sup> Womack’s prior felony conviction rendered him a person prohibited from possessing or controlling a firearm or ammunition.<sup>33</sup>

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<sup>27</sup> A37.

<sup>28</sup> A37.

<sup>29</sup> A37.

<sup>30</sup> A37.

<sup>31</sup> A37.

<sup>32</sup> A38.

<sup>33</sup> A7-8.

## **1. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED WOMACK'S MOTION TO SUPPRESS**

### **Question Presented**

Whether the Superior Court abused its discretion when it declined to suppress evidence found in a bag Womack removed from a vehicle immediately prior to its lawful search and which he discarded after resisting a lawful detention.

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

This Court reviews the Superior Court's denial of a motion to suppress for abuse of discretion.<sup>34</sup> The trial judge's legal conclusions are reviewed "*de novo* for errors in formulating or applying legal precepts."<sup>35</sup> "To the extent the trial judge's decision is based on factual findings, [this Court] review[s] for 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."<sup>36</sup> "An abuse of discretion occurs when 'a court has . . . exceeded the

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<sup>34</sup> *Loper v. State*, 8 A.3d 1169, 1172 (Del. 2010) (citing *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001)).

<sup>35</sup> *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

<sup>36</sup> *Id.*

bounds of reason in view of the circumstance,’ [or] . . . so ignored recognized rules of law or practice to produce injustice.”<sup>37</sup>

### **Merits of the Argument**

Womack acknowledges that “police had probable cause to stop the car driven by Jiminez based on an observed traffic violation – a dragging auto part.”<sup>38</sup> He also recognizes that “[p]olice were further authorized to order both Jiminez and Womack, (the front seat passenger), out of the car for purposes of an investigation limited to the scope of the traffic stop.”<sup>39</sup> But, he argues, Womack’s lawful detention “was transformed into an arrest when police attempted to handcuff [him],” and that “evidence seized as a result of his subsequent resisting an illegal arrest should have been suppressed.”<sup>40</sup> Womack’s argument is unavailing.

During this lawful roadside encounter, investigators asked Womack to exit the vehicle in which he was a passenger; Womack complied. When police found contraband – marijuana – within 30 seconds of initiating a lawful search of the vehicle, they reasonably chose to secure Womack for the remainder of the vehicle search. Womack resisted and fled. During his flight, Womack discarded the bag he

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<sup>37</sup> *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 570 (Del. 1988)).

<sup>38</sup> Op. Brf. at 8.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 9.

had removed from the vehicle in which he had carried a loaded revolver and other personal items. The Superior Court did not abuse its discretion by finding the State “met its burden by a preponderance of the evidence [establishing] that the conduct of the officers was lawful.”<sup>41</sup>

The Fourth Amendment to the United States Constitution and Article I, Section 6 of the Delaware Constitution protect citizens from unreasonable searches and seizures. “Under the Fourth Amendment, a traffic stop is a seizure of a vehicle and its occupants by the State.”<sup>42</sup> “The duration and execution of a traffic stop is necessarily limited by the initial purpose of the stop.”<sup>43</sup> And, “any investigation of the vehicle or its occupants beyond that required to complete the purpose of the traffic stop constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion.”<sup>44</sup>

“During a lawful traffic stop, a police officer may order both the driver and passengers out of the vehicle pending completion of the traffic stop.”<sup>45</sup> Of course, it is “reasonable for passengers to expect that a police officer at the scene of a crime,

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<sup>41</sup> A51.

<sup>42</sup> *Caldwell v. State*, 780 A.2d 1037, 1045 (Del. 2001).

<sup>43</sup> *Id.* at 1047 (citations omitted).

<sup>44</sup> *Id.*

<sup>45</sup> *Holden v. State*, 23 A.3d 843, 847 (Del. 2011) (citing *Maryland v. Wilson*, 519 U.S. 408, 415 (1997)).

arrest, or investigation will not let people move around in ways that could jeopardize his safety.”<sup>46</sup> This is so because “[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.”<sup>47</sup> If the circumstances of the detention or investigation warrant, officers may use handcuffs to maintain command of the situation.<sup>48</sup> Contrary to Womack’s argument on appeal, his “compelled presence,”<sup>49</sup> or detention, while police searched the vehicle was lawful.

The Superior Court correctly concluded “that *Juliano* does not apply to the facts of this case.”<sup>50</sup> This case involves the authority to search, rather than to arrest, for marijuana possession.<sup>51</sup> It is well established that the smell of marijuana alone is sufficient to constitute probable cause for a warrantless search, so long as the odor

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<sup>46</sup> *Brendlin v. California*, 551 U.S. 249, 258 (2007).

<sup>47</sup> *Id.* (quoting *Wilson*, 519 U.S. at 414 (quoting *Michigan v. Summers*, 452 U.S. 692, 702-03 (1981))).

<sup>48</sup> *Flowers v. State*, 195 A.3d 18, 25 (Del. 2018) (the use of handcuffs does not automatically convert a detention into an arrest).

<sup>49</sup> Op. Brf. at 12.

<sup>50</sup> A53.

<sup>51</sup> See *Juliano*, 260 A.2d at 630-31 (distinguishing authority to arrest for marijuana possession from authority to search based on the odor of marijuana). This Court concluded that the odor of marijuana alone does not support a full custodial arrest. *Id.* at 631.

is articulable and particularized.<sup>52</sup> And, despite the “decriminalization” of personal use quantities, “[m]arijuana was, and remains, contraband subject to forfeiture.”<sup>53</sup> “That possession of personal use of marijuana is not a criminal offense does not render marijuana odors, raw or burnt, irrelevant to determinations of probable cause.”<sup>54</sup> This conclusion is buttressed by the plain language of 16 Del. C. § 4764(h) which provides that “nothing contained [in the marijuana possession statute] shall be construed to repeal or modify any law or procedure regarding search and seizure.”<sup>55</sup>

In *Valentine*, this Court concluded that “Valentine’s speed (32 miles per hours above the speed limit), the time of day (1 a.m.), and the odor gave [the investigating officer] probable cause to believe that Valentine’s car contained contraband, in particular, marijuana.”<sup>56</sup> Here, after stopping Jiminez’s vehicle, Officer Hunt learned of active capiases for Jiminez. Jiminez and Womack exhibited nervous

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<sup>52</sup> *Law v. State*, 2018 WL 2024868, at \*2 (Del. May 17, 2018); *Fowler v. State*, 2016 WL 5853434, at \*1 (Del. Sept. 29, 2016).

<sup>53</sup> *Valentine*, 2019 WL 1178765, at \*2 (Del. March 12, 2019).

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

<sup>55</sup> 16 Del. C. § 4764(h); *see also* Synopsis to House Amend. No. 3 to H.B. 39, 148<sup>th</sup> 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/json/BillDetail/GetHtmlDocument?fileAttachmentId=50515> (last accessed November 21, 2022).

<sup>56</sup> *Valentine*, 2019 WL 1178765, at \*2.

behavior and lit cigarettes to mask other odors. When Officer Hunt removed Jiminez from the vehicle, he detected the odor of marijuana on his person. The officers' observations provided them probable cause to believe Jiminez's "car contained contraband, in particular, marijuana,"<sup>57</sup> and authorized the officers to search the vehicle and its contents for evidence related to marijuana possession or consumption.<sup>58</sup> Womack does not contest the officers' authority to search Jiminez's vehicle and its contents. Rather, he focuses on the duration and scope of his detention.

After the officers established probable cause, but prior to the search, they asked Womack to exit the vehicle. As he exited, Womack removed a bag from the passenger compartment.<sup>59</sup> While a typical vehicle search ranges from ten to twenty minutes,<sup>60</sup> within 30 seconds of starting the search, Officer Webb found marijuana near the driver's seat of the vehicle.<sup>61</sup> Officer Webb communicated his finding to Officer Canaan who then "attempted to detain Mr. Womack in handcuffs."<sup>62</sup> As the Superior Court concluded, after finding the small quantity of marijuana, "the officers

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

<sup>58</sup> *Valentine*, 2019 WL 1178765, at \*2.

<sup>59</sup> A42.

<sup>60</sup> A37.

<sup>61</sup> A37.

<sup>62</sup> A37.

were within their authority to conduct the search of the vehicle and that for officer safety *now* [Womack] was going to be handcuffed.”<sup>63</sup> Womack resisted this detention and fled.

Womack argues that the suppression of his firearm hinges on the determination of “whether the circumstances warrant the use of physical restraint during the investigatory detention.”<sup>64</sup> Not so. The officers’ concerns were, of course, heightened when Officer Webb found contraband within Jiminez’s vehicle. The State does not contest Womack’s assertion that “[t]he discovery of personal use marijuana under the driver’s seat . . . did not provide probable cause to arrest Womack, the front seat passenger.”<sup>65</sup> But, that finding did alter the investigative landscape. Officers discovered evidence within 30 seconds of the search. It was reasonable for the officers to believe that additional evidence might be found within the car or within the bag Womack removed from the vehicle. With these facts in mind, Officer Canaan sought to better secure Womack during his investigative detention.

Delaware law prohibits a person from intentionally preventing a peace officer from detaining the person, or from intentionally fleeing from a peace officer who is

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<sup>63</sup> A52 (emphasis added).

<sup>64</sup> Op. Brf. at 12.

<sup>65</sup> Op. Brf. at 14.

detaining the person.<sup>66</sup> And, “a defendant may be found guilty of resisting an illegal arrest.”<sup>67</sup> But where the seizure – arrest or detention – is unlawful, the results of a subsequent search are generally excluded.<sup>68</sup> Here, Womack’s continued detention during the investigation of Jiminez’s car was lawful and, when contraband was found within the vehicle, investigators were authorized to secure Womack. Thus, his resistance to, and flight from, the detention was unlawful and the evidence Womack discarded is not subject to exclusion.<sup>69</sup> As the Superior Court correctly determined, “while detained, [Womack] made the decision to run and the officers now had probable cause to arrest for his resistance to a lawful detention.”<sup>70</sup> As Womack stood outside the vehicle, holding the bag he had removed from within the vehicle, the officers were justified in adding an additional layer of security – handcuffs – to prevent Womack’s flight or removal of evidence.

Nonetheless, resolution of Womack’s claim does not hinge solely on an assessment of whether he was detained or arrested. Once the officers established probable cause to search the vehicle for marijuana, the permissible scope of their

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<sup>66</sup> 11 Del. C. § 1257(b).

<sup>67</sup> *Jones v. State*, 745 A.2d 856, 872 (Del. 1999).

<sup>68</sup> *Id.* at 873.

<sup>69</sup> *Jackson v. State*, 990 A.2d, 1281, 1289 (Del. 2009) (“Property discarded by a suspect who refuses to submit to an office’s authority and flees is deemed abandoned.”) (citing *California v. Hodari D.*, 499 U.S. 621, 629 (1991)).

<sup>70</sup> A53.

search necessarily included the backpack within the passenger compartment.<sup>71</sup> Womack removed the backpack when officers asked him to exit the car prior to the search. It does not appear that Delaware has squarely addressed this issue; however, other jurisdictions have recently held that, when a passenger is removed from a vehicle, the scope of the search extends to items the passenger removes with them.<sup>72</sup> To find otherwise, “would allow persons to frustrate a valid automobile search by removing objects from the vehicle.”<sup>73</sup> Thus, as the Superior Court concluded, “the firearm would have been inevitably discovered.”<sup>74</sup> Womack’s bag, present in Jiminez’s car when the police developed probable cause to search the car, was subject to search regardless of Womack’s flight. Neither Womack’s removal of the bag from the car, nor his flight from a lawful attempt to detain him should be

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<sup>71</sup> *Wyoming v. Houghton*, 526 U.S. 295, 302 (1999). “A passenger’s belongings, just like the driver’s belongings or containers attached to the car like a glove compartment, are ‘in’ the car, and the officer has probable cause to search for contraband *in* the car.” *Id.* See also *United States v. Ross*, 456 U.S. 798, 825 (1982) (probable cause to search a lawfully stopped vehicle “justifies the search of every part of the vehicle and its contents that may conceal the object of the search.”).

<sup>72</sup> See *State v. Rincon*, 970 N.W.2d 275, 285 (Iowa 2022); *State v. Maloney*, 489 P.3d 847, 852 (Idaho 2020) (to search a bag removed from the vehicle, probable cause to search the vehicle must exist prior to the bag’s removal). The Idaho Supreme Court, in *Maloney*, assessed cases from various jurisdictions and concluded that “Fourth Amendment jurisprudence supports the requirement that a container be within a vehicle at the time probable cause develops for the automobile exception to apply.” *Id.* at 854 (internal citations omitted).

<sup>73</sup> *Rincon*, 970 N.W.2d at 285.

<sup>74</sup> A53.

permitted to exclude the firearm found in connection with this lawful automobile search.<sup>75</sup>

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<sup>75</sup> To the extent the Superior Court limited its conclusion to a “narrow ruling” on the application of *Juliano*, this Court may affirm on grounds different than those cited by the Superior Court. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

## **CONCLUSION**

For the foregoing reasons, the State respectfully submits that this Court should affirm the judgment below.

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\_\_\_\_\_  
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Dated: November 21, 2022

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAQUAN WOMACK, )  
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Defendant-Below,   )  
Appellant,           )  
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v.                   )         No. 223, 2022  
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STATE OF DELAWARE, )  
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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.
2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 3,039 words, which were counted by Microsoft Word.

Dated: November 21, 2022

/s/ Sean P. Lugg  
Sean P. Lugg (I.D. No. 3518)  
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