



IN THE SUPREME COURT OF THE STATE OF DELAWARE

AQUAN HILTON,	§	
	§	No. 193 2022
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

**STATE'S ANSWERING BRIEF**

Date: January 17, 2023

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## NATURE OF PROCEEDINGS

On March 7, 2020, officers of the Wilmington Police Department (“WPD”) arrested Aquan Hilton for drug and firearm offenses.<sup>1</sup> A New Castle County Superior Court grand jury subsequently indicted Hilton for Possession of a Firearm During the Commission of a Felony (“PFDCF”), Drug Dealing, Possession of a Firearm by a Person Prohibited (“PFBPP”) (two counts), Possession of Ammunition by a Person Prohibited (“PABPP”), Carrying a Concealed Deadly Weapon (“CCDW”), Resisting Arrest, and Possession of Marijuana.<sup>2</sup>

Hilton moved to suppress all evidence obtained as a result of his arrest.<sup>3</sup> The Superior Court denied the motion after a hearing.<sup>4</sup>

Hilton and the State agreed to a stipulated trial on one count of PFBPP.<sup>5</sup> The State entered a *nolle prosequi* on the drug charges, PFDCF, PABPP, CCDW, Resisting Arrest, and the other PFBPP count.<sup>6</sup> On May 9, 2022, the Superior Court

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<sup>1</sup> Ai at D.I. 1; “D.I.” refers to docket item numbers on the Superior Court Criminal Docket in *State v. Hilton*, I.D. No. 2008002632.

<sup>2</sup> Ai at D.I. 3; B1-4.

<sup>3</sup> A9; Aiii at D.I. 19-20.

<sup>4</sup> Aiv at D.I. 26.

<sup>5</sup> Aiv-v at D.I. 28; B37-39.

<sup>6</sup> Ai; B41.

found Hilton guilty of PFBPP.<sup>7</sup> The court immediately sentenced Hilton to 15 years at Level V, suspended after 10 years for 1 year at Level III.<sup>8</sup>

Hilton timely appealed, challenging the denial of his motion to suppress, and filed his opening brief. This is the State's answering brief.

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<sup>7</sup> Av at D.I. 29.

<sup>8</sup> Av at D.I. 29, 31; Exhibit A to Corr. Opening Br.; B43.

## **SUMMARY OF ARGUMENT**

I. The Appellant's argument is denied. The Superior Court properly denied Hilton's motion to suppress. The WPD officer possessed a reasonable, articulable suspicion that Hilton possessed a concealed firearm after he exhibited the characteristics of an armed individual while walking towards the officer. After the officer spoke to Hilton in an attempt to make a consensual encounter, Hilton grasped an object under this shirt with both his hands and bladed his shoulders from the officer before running in the opposite direction. At that point, 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 the officer's subjective interpretation of those facts, demonstrated Hilton possessed a concealed deadly weapon. Therefore, the Superior Court properly found that the officer possessed the reasonable articulable suspicion before detaining Hilton.



## STATEMENT OF FACTS

On August 7, 2020, at approximately 1:11 a.m., WPD Detective Justin Wilkers called WPD Corporal Keith Johnson and told him that a known subject (Hilton) may be in possession of a firearm in the area of West 8th Street and North Tatnall Street in Wilmington.<sup>9</sup> Detective Wilkers told Corporal Johnson Hilton's name, his date of birth, and a description of what Hilton was wearing—a blue Captain America T-shirt with a red and white shield on the chest.<sup>10</sup>

Corporal Johnson responded to the area of West 8th Street and North West Street in his fully marked WPD vehicle.<sup>11</sup> Corporal Johnson was wearing his departmental uniform.<sup>12</sup> While at the intersection, Corporal Johnson observed Hilton walking towards him (westbound) on the southern sidewalk of the 300 block of West 8th Street.<sup>13</sup> Hilton was wearing a blue T-shirt with a big red and white shield in the center that appeared to be a Captain America T-shirt.<sup>14</sup>

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<sup>9</sup> A-1; B13-14.

<sup>10</sup> A-1-2.

<sup>11</sup> A-2.

<sup>12</sup> A-7.

<sup>13</sup> A-2-3.

<sup>14</sup> A-3.

Corporal Johnson had previously received training in identifying the characteristics of an armed gunman.<sup>15</sup> As Hilton was walking towards Corporal Johnson, Hilton was swinging his left arm freely but was pressing his right arm against the right side of his body without moving it.<sup>16</sup> That initially indicated to Corporal Johnson that Hilton possibly was armed or concealing some sort of other contraband inside his waistband on the right side.<sup>17</sup> In addition, Hilton was walking at a consistent pace towards the intersection until he observed Corporal Johnson's marked police vehicle.<sup>18</sup> Then Hilton drastically slowed his pace until he was barely moving forward.<sup>19</sup>

At that point, Corporal Johnson exited his patrol vehicle and attempted to make contact with Hilton.<sup>20</sup> Hilton frantically and quickly looked to his left and his right, like he intended to flee.<sup>21</sup> Corporal Johnson asked Hilton, "Hey, man, can I talk to you?"<sup>22</sup> Hilton immediately brought both of his hands to his waistband and

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<sup>15</sup> A-25.

<sup>16</sup> A-3, 6.

<sup>17</sup> A-3.

<sup>18</sup> A-4.

<sup>19</sup> A-4, 6; B22.

<sup>20</sup> A-4.

<sup>21</sup> B7-8.

<sup>22</sup> A-4.

appeared to grasp an item concealed under his shirt.<sup>23</sup> Hilton also “bladed” his body away from Corporal Johnson so that his right side was out of view of the officer.<sup>24</sup> At that point, Corporal Johnson’s training and experience led him to believe that Hilton’s actions meant he was likely armed.<sup>25</sup>

Corporal Johnson initially began to draw his firearm but re-holstered it when Hilton began running east on West 8th Street.<sup>26</sup> Corporal Johnson pursued Hilton on foot while telling him, “Stop, police.”<sup>27</sup> Hilton continued running east on West 8th Street.<sup>28</sup>

As Hilton entered the 200 block of West 8th Street, Officer Derek Haines assisted by blocking Hilton’s path on the southern sidewalk.<sup>29</sup> While running, Hilton reached into his waistband, removed a firearm, and attempted to throw it over a fence.<sup>30</sup> The firearm bounced off the fence and fell to the ground in front of Hilton.<sup>31</sup> Hilton then swatted the firearm, and it went under a motor vehicle parked on the

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<sup>23</sup> A-5-6.

<sup>24</sup> A-5-6.

<sup>25</sup> A-6-7.

<sup>26</sup> A-6-8; B28.

<sup>27</sup> A-7.

<sup>28</sup> A-7.

<sup>29</sup> B5.

<sup>30</sup> A-8.

<sup>31</sup> A-8.

street.<sup>32</sup> At that point Hilton crossed to the northern sidewalk, stopped running, and was taken into custody.<sup>33</sup> During a search incident to the arrest, officers located a bag containing marijuana, a bag containing crack cocaine, a digital scale, and \$2,100 in United States currency.<sup>34</sup>

After Hilton was taken into custody, Corporal Johnson recovered a magazine for a firearm next to the fence where Hilton had thrown the gun.<sup>35</sup> Corporal Johnson also recovered a green and black Smith & Wesson .40-caliber handgun under a parked car next to the magazine.<sup>36</sup>

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<sup>32</sup> A-8.

<sup>33</sup> B6.

<sup>34</sup> B6.

<sup>35</sup> B6-7.

<sup>36</sup> B7.

## ARGUMENT

### I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED HILTON’S MOTION TO SUPPRESS.

#### Question Presented

Whether the Superior Court abused its discretion by denying Hilton’s suppression motion after finding Corporal Johnson had reasonable articulable suspicion that Hilton illegally possessed a concealed weapon.

#### Scope of Review

This Court reviews the grant or denial of a motion to suppress for an abuse of discretion.<sup>37</sup> In addition, this Court defers to the factual findings of the Superior Court unless those findings are clearly erroneous.<sup>38</sup> “Embedded legal conclusions are reviewed ‘*de novo* for errors in formulating or applying legal precepts.’”<sup>39</sup> Accordingly, this Court reviews *de novo* whether the police possessed reasonable, articulable suspicion to stop a person.<sup>40</sup>

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<sup>37</sup> *State v. Murray*, 213 A.3d 571, 577 (Del. 2019); *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008); *Flonnory v. State*, 109 A.3d 1060, 1063 (Del. 2015).

<sup>38</sup> *State v. Rollins*, 922 A.2d 379, 382 (Del. 2007).

<sup>39</sup> *Flowers v. State*, 195 A.3d 18, 23 (Del. 2018) (*quoting Lopez-Vazquez*, 956 A.2d at 1285).

<sup>40</sup> *Murray*, 213 A.3d at 577; *Rollins*, 922 A.2d at 382.

## Merits of Argument

Hilton claims that Corporal Johnson lacked reasonable articulable suspicion of criminal activity to detain him.<sup>41</sup> He asserts that “at best, [Corporal] Johnson had a suspicion that he may be armed,” but the officer needed more information before reaching the critical reasonable suspicion threshold.<sup>42</sup> Hilton argues that Corporal Johnson seized him when the officer arrived at the scene with two additional officers, got out of the patrol car, immediately asked him if he could talk with the officer, and began to draw a firearm.<sup>43</sup> According to Hilton, at that point he was not free to walk away from the officers.<sup>44</sup> Hilton also argues that when Corporal Johnson drew his weapon, based on the holdings in *Terry v. Ohio*<sup>45</sup> and *INS v. Delgado*,<sup>46</sup> this action clearly demonstrated authority sufficient to restrain Hilton’s liberty.<sup>47</sup> Hilton further argues that under *Delgado*, adopted by this Court in *Jones v. State*,<sup>48</sup> once the officer drew his weapon, any citizen would have determined that action to mean he was not

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<sup>41</sup> Corr. Opening Br. 7-8; 13 (dated January 3, 2023).

<sup>42</sup> Corr. Opening Br. 13.

<sup>43</sup> Corr. Opening Br. 11-12.

<sup>44</sup> Corr. Opening Br. 12.

<sup>45</sup> 392 U.S. 1 (1968).

<sup>46</sup> 466 U.S. 210 (1984).

<sup>47</sup> Corr. Opening Br. 12.

<sup>48</sup> 745 A.2d 856 (Del. 1999).

free to walk away from the situation.<sup>49</sup> Finally, Hilton contends that because Corporal Johnson did not have reasonable articulable suspicion when the officer seized him, the Superior Court should have ruled as inadmissible all of the evidence the WPD obtained from Hilton after the unlawful seizure.<sup>50</sup>

The Superior Court properly found that Corporal Johnson possessed reasonable articulable suspicion that Hilton possessed a concealed firearm. Corporal Hilton's testimony explained in detail that based on his training about armed individuals and his experience, Hilton's actions displayed that he was carrying a concealed firearm under this shirt while walking on the sidewalk toward the officer.<sup>51</sup> The facts do not support Hilton's argument that three officers seized him at gunpoint. Rather, Corporal Johnson attempted to make a consensual encounter by asking Hilton if he could speak with him.<sup>52</sup> Hilton's reaction—grasping with both hands at an object at his waistline<sup>53</sup> and blading his right shoulder away from the officer<sup>54</sup>—confirmed the officer's suspicion that Hilton was illegally carrying a

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<sup>49</sup> Corr. Opening Br. 12.

<sup>50</sup> Corr. Opening Br. 8.

<sup>51</sup> A-3-6, 25-27.

<sup>52</sup> A-4.

<sup>53</sup> A-5-6.

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

concealed firearm. Thus, the Superior Court did not abuse its discretion by denying Hilton's motion to suppress.

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures.<sup>55</sup> A seizure occurs when “a reasonable person would have believed that he is not free to ignore the police presence.”<sup>56</sup> For example, ordering a person to stop and physically restraining him amounts to a seizure; merely asking to speak to a person does not.<sup>57</sup> When an officer detains a person to investigate possible criminal activity, such a seizure must be supported by reasonable articulable suspicion.<sup>58</sup>

Reasonable articulable suspicion exists when the officer can “point to specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant the intrusion.”<sup>59</sup> A determination of reasonable suspicion “must be evaluated in the context of the totality of the circumstances as viewed through the

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<sup>55</sup> U.S. Const. amend. IV. The Fourteenth Amendment makes the Fourth Amendment applicable to the states. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

<sup>56</sup> *Jones*, 745 A.2d at 869.

<sup>57</sup> *Ross v. State*, 925 A.2d 489, 493 (Del. 2007).

<sup>58</sup> *Woody v. State*, 765 A.2d 1257, 1262 (Del. 1999); *see Terry*, 392 U.S. at 30; *Jones*, 745 A.2d at 861; 11 *Del. C.* § 1902.

<sup>59</sup> *Bryant v. State*, 2017 WL 568345, at \*1 n.1 (Del. Feb. 8, 2017) (*quoting Jones*, 745 A.2d at 861; *see also Terry*, 392 U.S. at 21 (“[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”)).



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>60</sup> Included in that determination are “inferences and deductions that a trained officer could make that might well elude an untrained person.”<sup>61</sup> To determine whether reasonable suspicion exists to justify a detention, “the court defers to the experience and training of law enforcement officers.”<sup>62</sup>

**A. Corporal Johnson had reasonable articulable suspicion to detain Hilton.**

At the suppression hearing, the State presented sufficient evidence to show that Corporal Johnson developed reasonable articulable suspicion to investigate whether Hilton possessed a concealed deadly weapon before attempting to detain him. Corporal Johnson observed him display the characteristics of an armed person.<sup>63</sup> Corporal Johnson explained what he had learned from his Parole Training Academy and his work experience about characteristics of an armed person.<sup>64</sup> Specifically, he stated a person carrying a concealed firearm typically carries it inside their clothing instead of in a holster.<sup>65</sup> They use their arm or their hand to pin

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<sup>60</sup> *Bryant*, 2017 WL 568345, at \*1 n.1 (quoting *Jones*, 745 A.2d at 861).

<sup>61</sup> *Harris v. State*, 806 A.2d 119, 127 (Del. 2002).

<sup>62</sup> *Flowers*, 195 A.3d at 27 (quoting *Woody*, 765 A.2d at 1262).

<sup>63</sup> B7-8.

<sup>64</sup> A-25-27.

<sup>65</sup> A-26.

the concealed firearm to their body to hold it in place while they are moving.<sup>66</sup> While walking, a person carrying a concealed firearm will have one arm swingingly freely, but the other arm will be held to the side of their body (“canted”) and not moving freely.<sup>67</sup> When encountering police, Corporal Johnson said that armed persons will subconsciously reach for and touch a concealed firearm (called a security check) to ensure it is where they left it and secured.<sup>68</sup> They also will shield a concealed firearm from officers by turning away a portion of their body so that the concealed weapon is further away from the vantage of the police (called “blading”).<sup>69</sup> Lastly, a person carrying a concealed firearm will make efforts to avoid even incidental police contact.<sup>70</sup> If they see uniformed police, they will change the direction of their course, walk to the other side of the street, or break off from their original path.<sup>71</sup>

Corporal Johnson noticed that Hilton exhibited several specific characteristics of an armed gunman between the time he first saw Hilton walking down the street towards him and after Corporal Johnson spoke to him. Initially, Hilton was swinging

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<sup>66</sup> A-26.

<sup>67</sup> A-26.

<sup>68</sup> A-26.

<sup>69</sup> A-25.

<sup>70</sup> A-26-27.

<sup>71</sup> A-27.

his left arm freely but canting his right arm.<sup>72</sup> To Corporal Johnson, that meant Hilton was possibly armed or concealing some sort of other contraband inside his waistband on his right side.<sup>73</sup> Hilton walked at a consistent pace towards the intersection until he saw the officer's marked police vehicle.<sup>74</sup> Then Hilton drastically slowed his pace until he was barely moving forward.<sup>75</sup> When Corporal Johnson lingered at intersection, Hilton slowed down more, looked to the left and right of where the officer was located, and then looked back over his shoulder.<sup>76</sup>

At that point, Corporal Johnson parked, exited his patrol vehicle without turning on the overhead lights or sirens, and attempted to make contact with Hilton.<sup>77</sup> Upon seeing the officer, Hilton frantically and quickly looked to his left and his right, like he intended to flee.<sup>78</sup> Corporal Johnson asked Hilton, "Hey, man, can I talk to you?"<sup>79</sup> Hilton immediately brought both of his hands to his waistband and appeared to grasp an item concealed under his shirt.<sup>80</sup> Hilton also "bladed" his body

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<sup>72</sup> A-3, 6.

<sup>73</sup> A-3.

<sup>74</sup> A-4.

<sup>75</sup> A-4; B22.

<sup>76</sup> B8.

<sup>77</sup> A-4.

<sup>78</sup> B7-8.

<sup>79</sup> A-4.

<sup>80</sup> A-5-6.

away from Corporal Johnson.<sup>81</sup> At that point, Corporal Johnson’s training and experience led him to believe that Hilton likely was armed.<sup>82</sup> Corporal Johnson drew his firearm, but he re-holstered it and began pursuing Hilton on foot when he saw Hilton start running in the opposite direction.<sup>83</sup> The officer then said, “Stop, police.”<sup>84</sup>

As noted earlier, to determine whether a police officer has reasonable articulable suspicion that a suspect is committing a crime, a court defers to the experience and training of the law enforcement officer,<sup>85</sup> but focuses upon the totality of the circumstances viewed through the eyes of a reasonable, trained officer in the same or similar circumstances, combining objective facts with the officer’s subjective interpretation of those facts.<sup>86</sup> Corporal Johnson described the facts that led him to believe that Hilton was carrying a concealed deadly weapon: Hilton was canting his arm against his body; when he saw the officer, he drastically changed his pace, frantically scanned the areas around the officer, and looked back over his

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<sup>81</sup> A-5-6.

<sup>82</sup> A-6-7.

<sup>83</sup> A-7.

<sup>84</sup> A-7.

<sup>85</sup> *See Woody*, 765 A.2d at 1262.

<sup>86</sup> *See State v. Henderson*, 892 A.2d 1061, 1064-65 (Del. 2006) (*quoting Jones*, 745 A.2d at 861) (*citing United States v. Ortiz*, 449 U.S. 411, 417-18 (1981)) (*accord Quarles v. State*, 696 A.2d 1334, 1337 (Del. 1997)).

shoulder; when the officer spoke to him, Hilton grabbed at an object at his waistline, bladed his body, and fled from the officer even before Corporal Johnson drew his weapon.<sup>87</sup> When evaluated under the totality of the circumstances, these facts sufficiently support Corporal Johnson’s reasonable articulable suspicion that Hilton was engaged in criminal activity.

**B. Corporal Johnson did not seize Hilton until after the officer possessed reasonable articulable suspicion that Hilton was carrying a concealed firearm.**

Hilton argues that Corporal John had seized him by the time he drew his firearm.<sup>88</sup> Within that argument, he contends that the events of his initial police encounter were “near[ly] simultaneous” and, in doing so, characterizes the officers’ initial arrival as part of the act of seizing.<sup>89</sup> But Hilton cannot so easily blur the events together. “[L]aw enforcement officers are permitted to initiate contact with citizens on the street for the purpose of asking questions.”<sup>90</sup> “A consensual encounter between law enforcement officers and members of the public does not amount to a seizure and therefore does not implicate the Fourth Amendment.”<sup>91</sup>

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<sup>87</sup> A-3-7.

<sup>88</sup> Corr. Opening Br. 12.

<sup>89</sup> Corr. Opening Br. 12.

<sup>90</sup> *Woody*, 765 A.2d at 1263 n.3; *see also Lopez-Vazquez*, 956 A.2d at 1287 n.5; *Florida v. Royer*, 460 U.S. 491, 498 (1983).

<sup>91</sup> *Id.*

When Corporal Johnson initially got out of his vehicle, the officer asked Hilton, “Hey, man, can I talk to you?”<sup>92</sup> That was not a detention.<sup>93</sup> Hilton then grasped at his waist to do a security check of his concealed firearm and bladed his body.<sup>94</sup> Corporal Johnson observed and processed this information before reaching for his own weapon. Although these events happened close in time, they occurred in linear fashion—not almost simultaneously, as Hilton describes. Up until the moment Corporal Johnson began to draw his weapon and Hilton turned to run away, Hilton was not yet detained,<sup>95</sup> and Corporal Johnson properly relied on the facts observed after the stop in developing his suspicion.

The Superior Court reached this same conclusion. It focused on the reasonableness of Corporal Johnson’s testimony regarding his particularized and objective basis to suspect criminal activity.<sup>96</sup> The Superior Court also noted the facts here were analogous to those in *State v. Murray*,<sup>97</sup> except that Corporal Johnson had

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<sup>92</sup> A-4.

<sup>93</sup> *Cf. Ross*, 925 A.2d at 493.

<sup>94</sup> A-5-6.

<sup>95</sup> *Woody*, 765 A.2d at 1265 (finding that under the Delaware Constitution, and pursuant to *Jones*, Woody was seized when the officers ordered him to stop because at that point a "reasonable person would have believed he or she was not free to ignore the police presence.") (*citing Jones*, 745 A.2d at 869).

<sup>96</sup> B32.

<sup>97</sup> 213 A.3d 571 (Del. 2019).

also received information that the suspect (Hilton) possessed a firearm.<sup>98</sup> The Superior Court explained that aside from the tip, Corporal Johnson considered other factors in determining reasonable, articulable suspicion.<sup>99</sup> When Corporal Johnson saw Hilton in the area described by the caller and wearing clothing as described by the caller, the officer also noticed that Hilton was not swinging his right arm.<sup>100</sup> And:

[a]s soon as [Hilton] saw that the uniformed officer was approaching, [Hilton] started looking right and left, his pace slowed; and then when the officer exited the vehicle for contact and spoke to [Hilton], . . . [Hilton] clutched his waistband with both hands on the right side and then ran eastbound. Prior to running, [Hilton] had bladed his body to conceal his right side. . . . after the flight, [] [Hilton]'s right hand threw a firearm, which he later, I believe, kicked under a car. . . . But, in any event, after the firearm was thrown it was then shifted to a location underneath the car.<sup>101</sup>

The Superior Court also viewed evidence of a video clip showing Hilton on the street before Corporal Johnson arrived on the scene.<sup>102</sup> Hilton was twirling something in his right hand, “which is not the behavior that the officer observed.”<sup>103</sup> But the Superior Court indicated the video does not show the initial encounter

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<sup>98</sup> B33.

<sup>99</sup> B33.

<sup>100</sup> B33.

<sup>101</sup> B33-34.

<sup>102</sup> B34, 36.

<sup>103</sup> B34.

between the officer and Hilton; nor does it show what the officer did or did not see.<sup>104</sup> The only evidence of what the officer saw came from Corporal Johnson's testimony.<sup>105</sup> And his testimony contradicted Hilton's—who said the officer exited the vehicle, took out his Taser, and said “freeze” before Hilton fled.<sup>106</sup> Hilton is a convicted felon, and the Superior Court found Corporal Johnson's testimony to be more credible.<sup>107</sup> Based on the officer's testimony, the Superior Court found there was reasonable, articulable suspicion to stop Hilton and denied Hilton's motion to suppress.<sup>108</sup>

**C. All of the facts must be viewed together under the totality of the circumstances.**

Hilton attempts to dissect the combined facts and assign innocent explanations for each. He then argues that his reactions were natural<sup>109</sup> or perfectly reasonable<sup>110</sup> in isolation. But “the analysis of these factors is not done in isolation.”<sup>111</sup> The law

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<sup>104</sup> B34.

<sup>105</sup> B34.

<sup>106</sup> B34.

<sup>107</sup> B35.

<sup>108</sup> B35.

<sup>109</sup> Corr. Opening Br. 15.

<sup>110</sup> Corr. Opening Br. 14.

<sup>111</sup> *Lopez-Vazquez*, 956 A.2d at 1287. *See Riley v. State*, 892 A.2d 370, 375 (Del. 2006) (“The United States Supreme Court has rejected attempts by the Circuit Courts of Appeal to evaluate and reject ‘factors in isolation from each other.’”) (*quoting United States v. Arvizu*, 534 U.S. 266, 274 (2002)); *accord Rollins*, 922 A.2d at 384.



requires consideration of the totality of the circumstances,<sup>112</sup> and the determination “need not rule out the possibility of innocent conduct.”<sup>113</sup> Moreover, the United States Supreme Court’s holding in *Terry v. Ohio*<sup>114</sup> precludes a divide-and-conquer analysis.<sup>115</sup>

(1) ***The anonymous call was not the basis for Corporal Johnson’s reasonable articulable suspicion.***

Hilton also claims that the anonymous call Detective Wilkers received was useless because anyone could be in possession of a firearm, and the call said nothing about Hilton that the officer (or officers) did not already know.<sup>116</sup> In addition, he claims the call lacked details about where he may have obtained the firearm, for what

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<sup>112</sup> *Lopez-Vazquez*, 956 A.2d at 1287 (“To meet this standard and establish the reasonable and articulable suspicion necessary to survive a motion to suppress, the State must show specific facts ‘which, **when taken together** with rational inferences from those facts, reasonably warrant’ the stop.”) (emphasis added) (citations omitted).

<sup>113</sup> *Arvizu*, 534 U.S. at 277 (citing *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000)).

<sup>114</sup> 392 U.S. at 22 (holding that although each series of acts was “perhaps innocent in itself,” when taken together, they “warranted further investigation.” *See also United States v. Sokolow*, 490 U.S. 1, 9 (1989) (holding that factors which by themselves were “quite consistent with innocent travel” collectively amounted to reasonable suspicion).

<sup>115</sup> *Arvizu*, 534 U.S. at 274 (rejecting the lower court’s conclusion that respondent’s deceleration could not be considered in the reasonable suspicion analysis because slowing down after spotting a law enforcement vehicle was a normal response not indicative of criminal activity.)

<sup>116</sup> Corr. Opening Br. 13-14.

purpose he was using it, or how he was carrying it.<sup>117</sup> In short, Hilton seems to contend that the anonymous call did not support Corporal Johnson’s reasonable articulable suspicion that Hilton was engaged in criminal activity. But regardless of the call, Corporal Johnson concluded that Hilton was carrying a concealed weapon based on facts the officer personally observed about Hilton. In addition, the Superior Court did not analyze the tip or conclude it was the basis for Hilton’s detention because it was not critical to the reasonable suspicion determination.<sup>118</sup> Rather, the court noted that Corporal Johnson narrowed his search to someone with certain clothes in a certain area and saw Hilton matching that description.<sup>119</sup> The phone call tip served merely as context for the officer’s actions—not the basis for his actions, as Hilton seems to argue.<sup>120</sup>

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<sup>117</sup> Corr. Opening Br. 14.

<sup>118</sup> “The facts are pretty analogous to the *State v. Murray* case with the addition that the officer had received information that the suspect, in this case the defendant, possibly possessed a firearm. So that alone is something I don't really have to analyze because the officer testified that there were other factors that he took into consideration.” B33.

<sup>119</sup> B33.

<sup>120</sup> *See Flowers*, 195 A.3d at 30 (rejecting untimely argument that anonymous tip determined reasonable suspicion and concluding officers did not stop the defendant until after they had independent, ample corroboration of his suspicious behavior).

**(2) *Hilton's actions supported Corporal Johnson's reasonable articulable suspicion.***

Hilton attempts to characterize his actions as perfectly normal.<sup>121</sup> He contends that he slowed his walking pace when two or three police cars and three officers simultaneously suddenly arrived on what was an otherwise quiet street.<sup>122</sup> Hilton also contends he simply moved his hands towards his waist area when he saw Corporal Johnson and naturally reacted by running away when the officer began to unholster his weapon.<sup>123</sup> But no record evidence showed that area in Wilmington was otherwise quiet at night; nor was there any record evidence that three officers arrived simultaneously at the exact same location or that Hilton saw more than one officer while he was displaying actions consistent with a person carrying a concealed firearm.<sup>124</sup>

Instead, the evidence shows that Hilton was walking with his right arm canted to his side as he approached the intersection when Corporal Johnson arrived.<sup>125</sup> And Hilton was walking at a consistent pace towards the intersection until he saw Corporal Johnson's marked vehicle.<sup>126</sup> When Corporal Johnson exited his vehicle

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<sup>121</sup> Corr. Opening Br. 14-15.

<sup>122</sup> Corr. Opening Br. 14-15; 20.

<sup>123</sup> Corr. Opening Br. 15.

<sup>124</sup> A-2-4, 8; B5-6, 20-21.

<sup>125</sup> A-3, 6.

<sup>126</sup> A-4, 6; B22.

and spoke to Hilton, Hilton grasped at his waistband with both hands as if he were holding a concealed item.<sup>127</sup> Hilton also “bladed” his body away from Corporal Johnson and ran in the opposite direction—towards the area where an assisting officer later arrived.<sup>128</sup> These actions do not seem to correlate to perfectly natural reactions upon seeing one police officer attempt to speak with a civilian.

**(3) *The video clip does not provide relevant evidence of the critical time when Corporal Johnson formed his reasonable suspicion.***

Hilton argues that a portion of the video clip, which shows him walking towards the intersection where Corporal Johnson arrived, conflicts with and casts doubt on the officer’s testimony.<sup>129</sup> But the video does not conflict with—or even show—what happened after Corporal Johnson arrived on scene and encountered Hilton.<sup>130</sup> Nor does the video disprove that Hilton later was walking with his right arm against his body to shield the firearm that he was carrying. Importantly, the video has not been properly authenticated.<sup>131</sup> No one confirmed its origin. Nor does the video contain any time or date stamp.<sup>132</sup> And, in particular, the video seemed to

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<sup>127</sup> A-4-6.

<sup>128</sup> A-5-6; B5, 20-22.

<sup>129</sup> Corr. Opening Br. 16.

<sup>130</sup> B31.

<sup>131</sup> B16.

<sup>132</sup> B27.

omit some portion of time in the middle of the clip after Hilton disappears into the darkness towards an area that could have been where Hilton encountered Corporal Johnson.<sup>133</sup> The video omits the critical time period and actions that led to Corporal Johnson's reasonable articulable suspicion that Hilton was carrying a concealed firearm. The video is owed little weight in evaluating whether the key facts support the Superior Court's findings of reasonable articulable suspicion.

**(4) *Flight of a suspect can be part of the reasonable suspicion analysis.***

Hilton asserts that he ran only after he was seized and that the holdings in *Woody v. State*<sup>134</sup> and *Jones v. State*<sup>135</sup> show that his flight from the police officer cannot be used to determine reasonable suspicion.<sup>136</sup> Hilton's argument is only partially correct, in context. Before he turned to flee, and before he was seized, Hilton looked anxiously in several directions upon seeing the officer. Activities such as nervous, evasive behavior,<sup>137</sup> leaving the scene upon the approach or sighting of a police officer,<sup>138</sup> or refusing to cooperate with a police officer who initiates an

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<sup>133</sup> B25-28.

<sup>134</sup> 765 A.2d 1257 (Del. 2001).

<sup>135</sup> 745 A.2d 856 (Del. 1999).

<sup>136</sup> Corr. Opening Br. 17.

<sup>137</sup> *United States v. Brignoni-Ponce*, 422 U.S. 873, 885 (1975); *Florida v. Rodriguez*, 469 U.S. 1, 6 (1984); *Sokolow*, 490 U.S. at 8-9.

<sup>138</sup> *Cummings v. State*, 765 A.2d 945, 949 (Del. 2001).

encounter<sup>139</sup> cannot be the sole grounds to constitute reasonable suspicion.<sup>140</sup> But “these events may be considered as part of the totality of the circumstances”<sup>141</sup> and are “pertinent factor[s] in determining reasonable suspicion.”<sup>142</sup> This Court also considers other, additional circumstances, such as a defendant’s “unprovoked, headlong flight,”<sup>143</sup> a defendant “holding a bulge in his pocket that appeared to be either a gun or a large quantity of drugs,”<sup>144</sup> or a furtive gesture after the officer’s approach or display of authority.<sup>145</sup> “The officer’s subjective interpretations and explanations of why these activities, based on experience and training, may have given him a reasonable suspicion to investigate further are also important,<sup>146</sup> as is the trial judge’s evaluation of the officer’s credibility.”<sup>147</sup>

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<sup>139</sup> *Woody*, 765 A.2d at 1264.

<sup>140</sup> *Lopez-Vazquez*, 956 A.2d at 1288-89; *Woody*, 765 A.2d at 1264; *Cummings*, 765 A.2d at 949.

<sup>141</sup> *Lopez-Vazquez*, 956 A.2d at 1289; *Rollins*, 922 A.2d at 386 n.28 (citing cases).

<sup>142</sup> *Wardlow*, 528 U.S. at 124; *Brignoni-Ponce*, 422 U.S. at 885; *Rodriguez*, 469 U.S. at 6; *Sokolow*, 490 U.S. at 8-9.

<sup>143</sup> *Woody*, 765 A.2d at 1265.

<sup>144</sup> *Id.* at 1266.

<sup>145</sup> *Rollins*, 922 A.2d at 385 (considering the defendant’s “insertion and removal of his hand in his pocket when he saw the officers approaching.”).

<sup>146</sup> *Harris*, 806 A.2d at 121 (“In some instances ... lawful and apparently innocent conduct may add up to reasonable suspicion if the detaining officer articulates ‘concrete reasons for such an interpretation.’”) (citations omitted).

<sup>147</sup> *Lopez-Vazquez*, 956 A.2d at 1289. *See Purnell v. State*, 832 A.2d 714, 719 (Del. 2003) (“Courts will defer to the experience and training of police officers.”) (*citing Woody*, 765 A.2d at 1262); *Harris*, 806 A.2d at 121 (“Lawful and apparently

Moreover, the holding in *Woody v. State* actually supports using a defendant's flight from a police officer as one factor to consider in the reasonable suspicion analysis.<sup>148</sup> In that case, the defendant fled before the police officers initiated any contact with him, while two other men with the defendant remained.<sup>149</sup> This Court found the defendant's flight reflected nervous, evasive behavior, suggesting wrongdoing under the circumstances.<sup>150</sup> It also found such behavior may be a factor in analyzing reasonable suspicion.<sup>151</sup>

**(5) *The holdings in Jones and Florida v. J.L. do not support a different finding here.***

*Jones* is also distinguishable from the facts in this case. There, the police officer who encountered Jones testified that he did not see Jones engage in suspicious

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innocent behavior may be 'meaningless to the untrained' but still raise reasonable suspicion of drug trafficking in the eyes of a reasonable, prudent, and experienced police officer.") (*citations omitted*). See also *Quarles*, 696 A.2d at 1338 ("It logically follows that a pattern of behavior interpreted by an untrained observer as innocent could justify an investigatory stop when viewed by experienced law enforcement agents who are cognizant of current drug trafficking operations.").

<sup>148</sup> 765 A.2d at 1265.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*; see *Wardlow*, 528 U.S. at 124 ("Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.")

<sup>151</sup> *Woody*, 765 A.2d at 1265; see also *Wardlow*, 528 U.S. at 125 (2000) (concluding that officers were justified in suspecting defendant was engaged in criminal activity based on his presence in high crime area and his unprovoked flight upon seeing the law enforcement officers enter the neighborhood).

activity, nor did he recognize Jones as a person known to be involved in illegal activity.<sup>152</sup> The officer relied solely on an anonymous 911 call as the basis for approaching Jones, ordering him to remove his hands from his pockets, and then arresting Jones when he refused to comply.<sup>153</sup> Here, by contrast, Corporal Johnson possessed a reasonable articulable suspicion that Hilton was carrying a concealed firearm based on his canting while walking, his changed pace upon seeing the officer, his frantic search of the areas around the officer and over his own shoulder, his grasping of an object under his shirt with both hands, and his blading before running away.<sup>154</sup> These additional facts support a reasonable articulable suspicion that Hilton was committing a crime.<sup>155</sup>

Hilton also urges this Court to find the holding in *Florida v. J.L.*<sup>156</sup> determinative of this case.<sup>157</sup> But the facts in that case are also distinguishable. There, the officers suspected that the defendant was carrying a weapon based not on their own observations, but solely from an anonymous call.<sup>158</sup> The call provided no

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<sup>152</sup> *Jones*, 745 A.2d at 858-59.

<sup>153</sup> *Id.* at 859.

<sup>154</sup> A-3-6; B7-8, 22.

<sup>155</sup> A-6-7.

<sup>156</sup> 529 U.S. 266 (2000).

<sup>157</sup> Corr. Opening Br. 19.

<sup>158</sup> *Florida v. J.L.*, 529 U.S. at 270.



predictive information and left the police without means to test the informant's knowledge or credibility.<sup>159</sup> The police had only the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about the defendant.<sup>160</sup> Here, the tip prompted Corporal Johnson to go to area of West 8th and Tatnall Streets where he found Hilton; however, once the officer arrived there and observed Hilton's conduct, he was justified in detaining Hilton.<sup>161</sup> Thus, the tip did not provide Corporal Johnson with the required reasonable articulable suspicion—rather, it was the officer's observations of Hilton's conduct.

**D. The Superior Court's decision should be upheld.**

Corporal Johnson observed Hilton canting while walking on a public sidewalk in Wilmington and asked to speak with him. After Hilton grabbed an object on his waistline, bladed his shoulder away from the officer, and ran in the opposite direction, Corporal Johnson possessed reasonable articulable suspicion that Hilton was committing the crime of carrying a concealed firearm. Courts defer to the

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<sup>159</sup> *Id.* at 271.

<sup>160</sup> *Id.*

<sup>161</sup> *See Flowers*, 195 A.3d at 31 (finding that once officer saw defendant reach for something in his waistband, wrap his fingers around a rectangular object, and blade his body away from the advancing officers, he and the other officers possessed reasonable articulable suspicion to detain the defendant).

experience and training of law enforcement officers.<sup>162</sup> In this case, Corporal Johnson explained that he formed his reasonable suspicion based on his training and experience. Viewing all of the facts through the eyes of a reasonable, trained officer in the same or similar circumstances, and combining these objective facts with the officer's subjective interpretation of those facts, Corporal Johnson had reasonable articulable suspicion to stop Hilton and investigate further. The Superior Court reached this same conclusion based on the evidence and its interpretation of the law. This Court should find that the Superior Court did not abuse its discretion.

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<sup>162</sup> *Flowers*, 195 A.3d at 27 (quoting *Woody*, 765 A.2d at 1262).

## CONCLUSION

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

Respectfully submitted,

*/s/ Julie M. Donoghue*

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Date: January 17, 2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AQUAN HILTON,	§	
	§	No. 193 2022
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

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2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains **5,716** words, which were counted by Microsoft Word.

Date: January 17, 2023

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