



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELIJAH REGISTER, )  
)  
Defendant-Below, )  
Appellant, )  
)  
v. )  
)  
)  
STATE OF DELAWARE, )  
)  
Plaintiff-Below, )  
Appellee. )

No. 396, 2023

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**

Appellee, the State of Delaware, generally adopts the Nature and Stage of the Proceedings as contained in Appellant Elijah Register's January 31, 2024 Corrected Opening Brief. This is the State's Answering Brief in opposition to Register's appeal of his New Castle County Superior Court bench convictions for carrying a concealed deadly weapon (CCDW) and possession of a weapon with a removed, obliterated or altered serial number.

## **SUMMARY OF THE ARGUMENT**

I. DENIED. Two trained and experienced undercover police officers observed a hand-to-hand transaction of an unknown object between a suspected drug dealer who was under police surveillance and the defendant Elijah Register. Based on their prior experience both officers believed that they had witnessed a contraband drug transfer. As Register walked away, law enforcement officers detained Register. When Register placed his backpack on the ground, he was asked if he had a gun. Register answered in the affirmative, and a handgun with an obliterated serial number was located in his backpack.

Under these circumstances, law enforcement authorities had reasonable articulable suspicion to stop Register and question him. This was not an unconstitutional search and seizure, and the Superior Court after conducting an evidentiary hearing, did not abuse its discretion in denying the defense motion to suppress the physical evidence, a loaded handgun in Register's backpack.

## STATEMENT OF FACTS

On September 21, 2022, New Castle County Police Detective Anthony Randazzo was working with Delaware Probation and Parole as part of the Safe Streets Task Force. (A-27-28). The Task Force deals mostly with firearm and drug investigations. (A-28). Randazzo, who had prior narcotics investigation training, was in his third year on the Task Force. (A-28-29).

At the July 21, 2023 New Castle County Superior Court pretrial evidence suppression hearing (A-27-121), Detective Randazzo testified that he had both professional prior training and on-the-job experience in observing and detecting drug transactions. (A-29). During the pretrial suppression hearing, Randazzo noted that numerous times, “I have observed several hand-to-hand transactions.” (A-30).

September 21, 2022, Randazzo was working undercover near a Wawa convenience store on the corner of Memorial Drive and U.S. Route 13 in New Castle County. (A-34, 36-37). Randazzo was notified that day that Detective Witte had observed Khaalid Lopez, a suspected drug dealer (A-35), in the area of the Wawa travelling in a white Hyundai sedan operated by a female later identified as Neveah Moore, Lopez’s girlfriend. (A-37-38). When the undercover police officer arrived, he observed Lopez standing at one of the Wawa gas pumps. (A-37). Lopez’s vehicle was on the right and facing Randazzo’s vehicle. (A-38). The

windows were up in the undercover officer's vehicle, but he was in close proximity to Lopez and able to observe Lopez through his vehicle windshield and passenger side window. (A-40). Randazzo also saw Moore in the driver seat of the white Hyundai. (A-38).

Next, the nearby undercover officer saw a black male wearing a white tank top shirt and carrying a black fanny pack approach Lopez at the rear of the white vehicle. (A-38). During the suppression hearing, Randazzo identified defendant Elijah Register in the courtroom as the person who approached Lopez at the Wawa gas pumps. (A-39).

A brief conversation between Lopez and Register took place, and Lopez went to the driver side of the white car as the female exited the vehicle. (A-39). Register remained outside at the rear of the Hyundai. (A-40). Referring to Lopez, Ranazzo testified, "He then got out of the car and handed an unknown item to the male." (A-39).

According to the undercover officer, Lopez walked directly to Register and put his hand out. (A-41). Although Randazzo could not see what Lopez retrieved under the driver seat (A-41), the detective relayed what he had just observed to other law enforcement units in the area. (A-42). When Lopez and Moore re-entered the Hyundai, Randazzo assisted in a traffic stop of the vehicle. (A-42).



The police did not find any contraband in the Hyundai (A-72), and Lopez said he passed Register a vape. (A-69).

New Castle County Police Detective Kenneth Guarino, an 11-year police veteran, was also working with the Safe Streets Task Force on September 21, 2022 at the Memorial Drive and Route 13 Wawa. (A-84). Following the hand-to-hand transaction between Lopez and Register (A-64, 66, 85-86), Guarino, Detective Witte, and Probation Officer McHugh conducted a pedestrian stop of Register. (A-44, 85).

Like Detective Randazzo (A-64, 66-67), Detective Guarino also observed the September 21 interaction between Lopez and Register. (A-85-86, 91). At the 2023 suppression hearing Guarino testified that he saw Lopez exit the white vehicle, walk to the rear of the Hyundai, interact with Register, and return to the car. (A-85-86). Guarino did not see what Lopez handed Register, but both individuals left the area following the exchange. (A-85-86).

Police Officer Guarino was wearing a body-worn camera on September 21. (A-87). The policeman followed Register as Register walked away from Lopez and moved toward Route 13. (A-86). Probation Officer McHugh, who did not have a body camera (A-93), took Register into custody (A-92-93), and placed Register in handcuffs. (A-94). Register was not on probation when stopped. (A-48-49, 121).

Guarino's body camera DVD, State's Exhibit #2, of the encounter with Register was played for the Superior Court Judge at the suppression hearing. (A-88). A search of Register's pockets only revealed a package of skittles. (A-92). When asked if he had a gun, Register answered, yes. (A-94-95). A handgun with an obliterated serial number (A-88) was found in Register's bag. (A-92). Register did not have a concealed carry permit to possess the firearm. (A-89).

At the conclusion of the suppression hearing, the Superior Court Judge reserved decision (A-122-23), and later issued a written Order denying the defense suppression motion.<sup>1</sup> (A-125-29).

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<sup>1</sup> *State v. Register*, 2023 WL 6323594 (Del. Super. Sept. 26, 2023).

## ARGUMENT

### I. THERE WAS REASONABLE ARTICULABLE SUSPICION TO STOP REGISTER.

#### Question Presented

Whether after witnessing a hand-to-hand transaction (A-39, 41, 64, 66, 85-86) between a suspected drug dealer (A-35) and Elijah Register, law enforcement authorities had reasonable articulable suspicion to stop Register. (A-127-28).

#### Standard and Scope of Review

The Superior Court's denial of a pretrial motion to suppress physical evidence after conducting a hearing (A-126-28) is reviewed on appeal for an abuse of discretion.<sup>2</sup> This Court reviews *de novo* whether the police possessed reasonable articulable suspicion to stop a person.<sup>3</sup>

#### Merits of the Argument

After conducting a July 21, 2023 hearing (A-27-121), the Superior Court found that law enforcement officers seized Elijah Register on September 21, 2022 in the parking lot of a Wawa store after Register's interaction with Khaalid Lopez, a suspect in a prior drug investigation (A-35) who was under police surveillance.<sup>4</sup>

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<sup>2</sup> *Houston v. State*, 251 A.3d 102, 108 (Del. 2021); *Flonnory v. State*, 109 A.3d 1060, 1063 (Del. 2015).

<sup>3</sup> *State v. Murray*, 213 A.3d 571, 577 (Del. 2019); *State v. Rollins*, 922 A.2d 379, 382 (Del. 2007).

<sup>4</sup> *State v. Register*, 2023 WL 6323594, at \*1 (Del. Super. Sept. 26, 2023).

(A-37, 126). According to the hearing Judge, “The body worn camera of a police officer tells the story of what happened next.”<sup>5</sup> The DVD of New Castle County Police Detective Kenneth Guarino’s body worn camera (A-87), State’s Exhibit #2, was played at the pretrial evidence suppression hearing. (A-88).

Detective Guarino and Probation Officer McHugh (A-92-93) approached Register and stopped him for questioning. “They asked him his name and, as the Defendant put his backpack on the ground, they asked if he had anything in his backpack.”<sup>6</sup> Next, “...the Defendant told the police there was a gun in his backpack.”<sup>7</sup>

In this Carrying a Concealed Deadly Weapon (CCDW)<sup>8</sup> prosecution, Register “...moved to suppress the weapon as the fruits of an illegal search. He claims that the police did not have either reasonable suspicion or probable cause to retrieve the handgun he just told them he possessed.”<sup>9</sup>

Register did not have a concealed carry permit (A-89), so he was obviously guilty of CCDW. Second, because the firearm in Register’s backpack had a scratched off serial number (A-88), he was also guilty of Possession of a Weapon

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<sup>5</sup> *Register, supra*, at \*1.

<sup>6</sup> *Id.*, at \*1.

<sup>7</sup> *Id.*, at \*1.

<sup>8</sup> 11 Del. C. § 1442.

<sup>9</sup> *Register, supra*, at \*1.

with a Removed, Obliterated or Altered Serial Number.<sup>10</sup> The loaded handgun in Register’s backpack qualified as a “deadly weapon.”<sup>11</sup>

The Superior Court found that Register’s conduct at the Wawa prior to the police stop “was consistent with a drug transaction” because there was a hand-to-hand transaction at the gas pumps with Lopez, “...the drug dealing suspect...known to sell drugs in the parking lot of convenience stores,... [who] was under active surveillance...”<sup>12</sup> Thus, there was “...a reasonable articulable suspicion to at least stop the Defendant briefly and detain him long enough to allay law enforcement’s concerns that he had not just committed a criminal act. Because the Defendant told them he had a firearm in his backpack, he gave them all the additional information they needed to seize the gun and charge him with an offense.”<sup>13</sup>

On direct appeal, Register argues that his September 21, 2022 Wawa parking lot stop by law enforcement authorities was an unjustified seizure in violation of both the United States and Delaware Constitutions.<sup>14</sup> According to Register, “The record fails to establish that police had reasonable suspicion to seize Register.”<sup>15</sup>

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<sup>10</sup> 11 Del. C. § 1458(a).

<sup>11</sup> 11 Del. C. § 222(5)

<sup>12</sup> *Register, supra*, at \*2.

<sup>13</sup> *Id.*, at \*2 (footnote omitted).

<sup>14</sup> January 31, 2024 Corrected Opening Brief at 5.

<sup>15</sup> Opening Brief at 7.

Furthermore, he claims, “In the instant case, police failed to establish that there was reasonable, articulable suspicion that Register had engaged in criminal activity.”<sup>16</sup>

Register is incorrect. Police officers may seize or stop an individual for investigatory purposes “based on a reasonable and articulable suspicion of criminal activity.”<sup>17</sup> The Superior Court in denying the defense pretrial motion to suppress Register’s firearm as physical evidence for the two gun charges correctly found that the hand-to-hand transaction between Lopez and Register witnessed by two experienced New Castle County Police Detectives (Anthony Randazzo and Kenneth Guarino) was evidence of suspected criminal activity, a contraband drug transfer. (A-127-28). The hearing judge noted that “...the Defendant appeared at the pumps and engaged in a ‘hand to hand’ transaction of some type. Police suspected it was drugs.”<sup>18</sup>

A trial court’s factual findings will be upheld if they are based upon competent evidence and are not clearly erroneous.<sup>19</sup> The competent suppression hearing evidence here was the in-person observations of two police detectives with training

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<sup>16</sup> Opening Brief at 7.

<sup>17</sup> *Hall v. State*, 981 A.2d 1106, 1110 (Del. 2009). *See also Jones v. State*, 745 A.2d 856, 860-61 (Del. 1999).

<sup>18</sup> *Register, supra*, at \*1.

<sup>19</sup> *See Jackson v. State*, 990 A.2d 1281, 1288 (Del. 2009); *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

and on-the-job experience in observing hand-to-hand drug transactions. (A-29-31, 39-41, 64, 66, 86).

Detective Randazzo testified, “I have observed several hand-to-hand transactions” numerous times. (A-30). Randazzo estimated seeing 1 to 2 hand-to-hand transactions per week. (A-31). Randazzo had served on the Safe Streets Task Force investigating firearm and drug crimes for years. (A-27-28).

After viewing the gas pump interaction between Lopez and Register, Randazzo stated, “I observed what I believed to be a hand-to-hand.” (A-64). Neither Randazzo (A-67), nor Detective Guarino (A-86) could see exactly what Lopez handed Register, but Register’s conduct was consistent with a drug transaction. (A-41, 64, 127-28). As this Court has pointed out, “...in cases involving purely circumstantial evidence, the State need not disprove every possible innocent explanation.”<sup>20</sup>

In a State appeal, this Court reversed the Superior Court’s grant of a defense motion to suppress because the trial court used the incorrect legal standard.<sup>21</sup> The Alfred Terry drug prosecution involved a motor vehicle search after a police detective witnessed Terry stop on the side of the road to conduct a hand-to-hand

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<sup>20</sup> *Castro v. State*, 266 A.3d 201, 205 (Del. 2021) (citing *Monroe v. State*, 652 A.2d 560, 567 (Del. 1995)).

<sup>21</sup> *State v. Terry*, 2020 WL 1646775 (Del. Apr. 2, 2020).

transaction with an unknown person. On appeal, this Court noted that “Due to his training and experience, Detective Wilson believed he had witnessed a drug transaction.”<sup>22</sup> The police observation of a hand-to-hand exchange was part of the probable cause to believe Terry’s vehicle contained contraband. Thereafter, the search of Terry’s vehicle was permissible under the automobile exception without a showing of exigent circumstances.<sup>23</sup> A similar informed police observation of a hand-to-hand transaction between Lopez and Register provided reasonable articulable suspicion to stop Register after the suspected transfer.

Similarly, this Court affirmed a constructive possession of contraband drugs where a police officer using binoculars in a second-story elementary school classroom observed Dwayne Wright “who was standing near the school, conducting hand-to-hand drug transactions.”<sup>24</sup> The heroin and marijuana was seized from a trashcan about thirty feet from where Wright was observed.<sup>25</sup> This Court in *Wright* pointed out that “...it is not unreasonable to infer that Wright’s hand-to-hand transactions observed by Officer Metzner showed that he was controlling the destiny of the drugs in the trashcan.”<sup>26</sup> Based on the hand-to-hand transaction observed in

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<sup>22</sup> *Terry*, 2020 WL 1646775, at \*1.

<sup>23</sup> *Id.*, at \*2.

<sup>24</sup> *Wright v. State*, 2014 WL 1003584, at \*1-2 (Del. Mar. 7, 2014).

<sup>25</sup> *Wright, supra*, at \*1.

<sup>26</sup> *Id.*, at \*2.



Register's case, it was not unreasonable for police to infer that Register received contraband from drug dealer Lopez.

Ira Brown was a heroin trafficking prosecution where this Court observed: "The evidence at trial was that Brown engaged in a hand-to-hand drug transaction."<sup>27</sup> Likewise, in Russell Hurst's case police observed two men engaging in hand-to-hand transactions outside a Seaford home.<sup>28</sup> Finally, this Court in Andre McDougal's heroin trafficking case held that "The testimony of the police officer who observed McDougal before, during, and after the hand-to-hand transaction clearly established...a reasonable articulable suspicion."<sup>29</sup> As this Court's prior decisions in *Terry*, *Wright*, *Brown*, *Hurst*, and *McDougal* all illustrate, observation of a suspected hand-to-hand drug transaction by a trained and experienced police officer establishes reasonable articulable suspicion to stop one of the participants immediately after the encounter.

The Fourth Amendment to the United States Constitution protects individuals from unreasonable searches and seizures.<sup>30</sup> A seizure occurs when "under all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he/she was not free to terminate the

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<sup>27</sup> *Brown v. State*, 2013 WL 434054, at \*3 (Del. Feb. 4, 2013).

<sup>28</sup> *Hurst v. State*, 2013 WL 85109, at \*1, 3 (Del. Jan. 7, 2013).

<sup>29</sup> *McDougal v. State*, 2012 WL 3862030, at \*3 (Del. Sept. 5, 2012).

<sup>30</sup> U.S. Const. Amend. IV.

encounter with the officers.”<sup>31</sup> When Register was stopped by Guarino and McHugh in the Wawa parking lot in 2022 (A-91-94), Register was seized by law enforcement authorities.

When an officer detains a person to investigate possible criminal activity, such a seizure must be supported by reasonable articulable suspicion.<sup>32</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>33</sup> A police seizure of a person is evaluated for reasonableness under the totality of the circumstances, including “inferences and deductions that a trained officer could make which might well elude an untrained person.”<sup>34</sup>

There must be a “particularized and objective basis for suspecting legal wrongdoing” to establish reasonable and articulable suspicion of criminal activity.<sup>35</sup> In determining whether reasonable suspicion exists to justify a detention, “the court

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<sup>31</sup> *Quarles v. State*, 696 A.2d 1334, 1336-37 (Del. 1997) (quoted in *State v. Murray*, 213 A.3d 571, 577 (Del. 2019)).

<sup>32</sup> *Woody v. State*, 765 A.2d 1257, 1262 (Del. 1999); *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).

<sup>33</sup> *Bryant v. State*, 2017 WL 568345, at \*1, n.1 (Del. Feb. 8, 2017). See *Jones*, 745 A.2d at 861; *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989).

<sup>34</sup> *Hall v. State*, 981 A.2d 1106, 1110 (Del. 2009) (quoting *Lopez-Vazquez v. State*, 956 A.2d 1280, 1286-87 (Del. 2008)).

<sup>35</sup> *Hall*, 981 A.2d at 1110 (quoting *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008)).

defers to the experience and training of law enforcement officers.”<sup>36</sup> Both Randazzo and Guarino were trained and experienced police officers familiar with hand-to-hand drug transfers. (A-28-31, 64, 85-86).

After observing the hand-to-hand transaction between Lopez and Register, Detective Randazzo relayed his observation of a suspected drug transfer to the assisting units in the area. (A-42). Under the totality of these circumstances, there was reasonable articulable suspicion to seize Register as he walked away from Lopez. There was no abuse of discretion by the Superior Court in denying the defense suppression motion of Register after conduction a pretrial hearing.<sup>37</sup>

For the first time on direct appeal Register argues that his stop was in violation of the Delaware State Constitution.<sup>38</sup> No such claim was presented in the pretrial suppression motion (A-6-12), at the July 21, 2023 suppression hearing (A-23-124), or addressed in the trial court’s ruling (A-125-29); thus, the claim has been waived and may now only be addressed for plain error.<sup>39</sup> Register cannot demonstrate plain

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<sup>36</sup> *Flowers v. State*, 195 A.3d 18, 27 (Del. 2018) (quoting *Woody*, 765 A.2d at 1262).

<sup>37</sup> *See State v. Murray*, 213 A.3d 571, 577 (Del. 2019).

<sup>38</sup> Opening Brief at 6.

<sup>39</sup> Del. Supr. Ct. R. 8.

error because he has not presented the required analysis of *Ortiz v. State*<sup>40</sup> for such arguments.

## CONCLUSION

The judgment of the Superior Court should be affirmed.

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<sup>40</sup> 869 A.2d 285, 290-91 + n.4 (Del. 2005). *See Jackson v. State*, 990 A.2d 1281, 1288 (Del. 2009).

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

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 Appellee. )

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