



IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-GHANIYY PRICE)	
)	
Defendant Below-)	
Appellant,)	
)	
v.)	No. 228, 2024
)	
STATE OF DELAWARE,)	On appeal from the
)	Superior Court of the
Plaintiff Below-)	State of Delaware
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

/s/ David Hume, IV
Bar I.D. No. 3706
Deputy Attorney General
Department of Justice
13 The Circle
Georgetown, DE 19968
(302) 856-5353

Dated: October 28, 2024

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations.....	ii
Nature and Stage of the Proceedings	1
Summary of the Argument	2
Statement of Facts	3
Argument:	
I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT DENIED PRICE’S MOTION TO SUPPRESS EVIDENCE	9
A. Police seized Price after they had probable cause to believe he committed a criminal violation	11
B. The 911 call in conjunction with Officer Webb’s observations and experience provided reasonable, articulable suspicion to detain Price for investigatory purposes	20
C. The observable traffic violation provided a basis to seize Price	24
Conclusion	27

TABLE OF CITATIONS

Cases

<i>Caldwell v. State</i> , 780 A.2d 1037 (Del. 2001).....	26
<i>California v. Hodari D.</i> , 499 U.S. 621 (1991).....	11, 12, 19
<i>Chavous v. State</i> , 953 A. 2d 282 (Del. 2008)	9
<i>Flonnory v. State</i> , 805 A.2d 854 (Del. 2001)	18, 19
<i>Flonnory v. State</i> , 893 A.2d 507 (Del. 2006)	9
<i>Gregory v. State</i> , 616 A.2d 1198 (Del. 1992).....	9
<i>Hall v. State</i> , 981 A.2d 1106 (Del. 2009)	20
<i>Holden v. State</i> , 23 A.3d 843 (Del. 2011).....	9
<i>Houston v. State</i> , 251 A.3d 102 (Del. 2021).....	24
<i>Jones v. State</i> , 745 A.2d 856 (Del. 1999)	10, 11, 12
<i>Lopez-Vazquez v. State</i> , 956A.2d 1280 (Del. 2008)	9
<i>McAllister v. State</i> , 807 A.2d 1119 (Del. 2002)	9
<i>Potts v. State</i> , 458 A.2d 1165 (Del. 1983).....	9
<i>Reed v. State</i> , 2014 WL 1494098 (Del. Apr. 14, 2014).....	25
<i>Robertson v. State</i> , 596 A.2d 1345 (Del. 1991).....	22
<i>State v. Prouse</i> , 382 A.2d 1359 (Del. 1978), <i>aff'd</i> , 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)	24
<i>Terry v. Ohio</i> , 392 U.S. 1 at 30-31 (1968).....	22

<i>United States v. Hayden</i> , 759 F.3d 842, 847 (8 th Cir. 2014).....	19
<i>United States v. Lawhorn</i> , 735 F.3d 817 (8 th Cir. 2013).....	19
<i>United States v. Martin</i> , 618 F.Supp. 3d 205, 214 (W.D. Pa. 2022).....	19
<i>West v. State</i> , 143 A.3d 712 (Del. 2016).....	24
<i>Williams v. State</i> , 962 A.2d 210 (Del. 2008).....	9, 13, 14
<i>Woody v. State</i> , 765 A.2d 1257 (Del. 2001).....	9, 22
Statutes	
11 <i>Del. C.</i> §1902	26

NATURE AND STAGE OF THE PROCEEDINGS

On December 27, 2022, police arrested Al-Ghaniyy Price (“Price”) for drug offenses. A1 at D.I. 1. A grand jury indicted Price for five counts of Drug Dealing, one count of drug possession, and one count of drug paraphernalia. A1 at D.I. 2; A7-9. On August 25, 2023, Price filed a Motion to Suppress. A3 at D.I. 17; A10-19. The State filed a response on October 12, 2023. A3 at D.I. 24; A20-36. On October 20, 2023, the Superior Court held a suppression hearing and denied the motion. A3 at D.I. 27; A37-57. Price had a jury trial on January 30 and 31, 2024. A5 at D.I. 44. The jury found Price guilty of Drug Possession (Cocaine), Drug Dealing (Heroin), Drug Possession (Heroin), Possession of Drug Paraphernalia, and a lesser included offense of Possession or Consumption of Marijuana in a Vehicle. A5 at D.I. 44. On June 7, 2024, the court sentenced Price to an aggregate ten years at Level V followed by diminishing levels of probation.¹ A5 at D.I. 46.

Price timely filed his Opening Brief. This is the State’s Answering Brief.

¹ Defendant’s Exhibit C.

SUMMARY OF THE ARGUMENT

- I. Appellant's argument is DENIED. The Superior Court did not abuse its discretion or otherwise err when it denied Price's motion to suppress evidence. Evidence supported the court's finding that a seizure did not occur until after police saw Price drop a heroin bundle. The officers' approach to Price's Jeep did not constitute a seizure before that. Even if a seizure occurred earlier, police had reasonable articulable suspicion to contact Price based upon the substance of the 911 telephone call and Officer Webb's experience and observations when he arrived on scene. Police were also permitted to make a brief investigatory detention of Price because he was parked illegally in violation of Title 21.

STATEMENT OF FACTS

On December 27, 2022, New Castle County Police Department officers were dispatched to Blue Spruce Drive at approximately 2:20 a.m. based on a 911 call.² A38. The 911 caller described a black male in a white Jeep Cherokee in front of his location.³ The caller described the male's complexion, facial hair, and age.⁴ The caller stated that he was not sure if the male was "casing houses" but that he did not feel safe.⁵ He saw the same vehicle approximately one week before and called it in, but the vehicle was gone when police arrived.⁶ The caller provided the license plate number for the Cherokee and reported that it had been there for over an hour.⁷ The caller also described what the male was wearing, his height, and hairline.⁸

Five officers- Officer Webb, Officer Ivory, Officer Bolden, Officer Montan, and Officer Bochanski- arrived in three police vehicles. A38. Of the five officers, two were rookies who accompanied their Field Training Officers ("FTO"). A43. The police vehicles did not have their emergency lights or sirens activated. A38.

² The 911 call was admitted at the suppression hearing as a State Exhibit. It is attached in the Appendix to the State's Answering Brief at B1. For the Court's convenience, the State shall employ the same naming convention as Price did in his Opening Brief (e.g. 911 Call at ____).

³ 911 Call at :11-:20.

⁴ 911 Call at :28-:40.

⁵ 911 Call at :40-:48.

⁶ 911 Call at :54-1:03

⁷ 911 Call at 1:04-1:15.

⁸ 911 Call at 2:10-2:39.

Officer Webb and Officer Bolden were FTOs) accompanied by rookie Officers Ivory and Montan, respectively.⁹ Officer Webb did not hear one hundred percent of the 911 call when he was dispatched and was unaware that the Cherokee had been called in by the same person the week prior. A38.

Officer Webb found the Cherokee suspicious because he was informed it was not regular to the area, it was 2 a.m., it was occupied, and had been running for over an hour. A38. In his police experience, he had observed similar situations where individuals were engaged in theft of vehicles or burglary. A38.

Officers Bochanski, Webb, and Ivory each wore a body-worn camera (“BWC”). There is a 30-second backup for video, but not audio, that occurs when the BWC is activated. A39-40. Each BWC had the same delay. A40. Officer Ivory’s BWC video showed that he parked his vehicle (also containing Officer Webb) on the side of the road opposite the Cherokee and facing the direction of the Cherokee.¹⁰ Officer Ivory’s vehicle was parked multiple car lengths away from the Cherokee.¹¹ Officer Ivory’s BWC video showed Officer Bochanski arriving as Officers Ivory and Webb stepped out of their vehicle and walked down the street in

⁹ The BWC videos of Officers Bochanski, Webb, and Ivory were admitted at the suppression hearing as State’s Exhibit 2. They accompany the Answering Brief in the Appendix at B2-4. For the Court’s convenience, the State shall employ the same naming convention as Price did in his Opening Brief (e.g. “Bochanski, at ___”).

¹⁰ Ivory, at 2:21:58-2:22:04.

¹¹ Ivory at 2:22:05.

the direction of the Cherokee.¹² Officer Bochanski parked on the opposite side of the street from Officer Ivory's vehicle (on the same side as the Cherokee), facing the Cherokee and multiple car lengths away from it.¹³ Officer Ivory's BWC showed that the headlights of his and Officer Bochanski's vehicles were on.¹⁴ The headlights of a third police vehicle, positioned behind the Cherokee were also visible.¹⁵ As Officer Ivory walked down the opposite side of the street from the Cherokee, another officer was visible near the passenger side of the Cherokee's rear bumper.¹⁶ This was Officer Montan. A40. Officer Montan held a flashlight, and the third police vehicle was positioned behind her on the street behind the Cherokee.¹⁷ None of the police vehicles had their emergency lights activated. No vehicles blocked the Cherokee from leaving. A39. The audio of Officer Ivory's video began at 2:22:25.

Officers Webb and Ivory parked on the corner opposite the Cherokee and facing it. A39. Officer Webb's BWC showed him shortly thereafter walking up the sidewalk on the same side as the Cherokee.¹⁸ Officer Webb's BWC captured the Cherokee's driver's door opening at 2:22:18 and closing at 2:22:23. Officer Webb believed that one of the officers asked Price to roll his windows down, but this was

¹² Ivory, at 2:22:03.

¹³ Ivory, at 2:22:05.

¹⁴ Ivory, at 2:22:05

¹⁵ Ivory, at 2:22:09.

¹⁶ Ivory, at 2:22:10-2:22:21.

¹⁷ Ivory, at 2:22:21.

¹⁸ Webb, at 2:22:12.

not a command and it occurred prior to the audio for any of the BWC. A47. Officer Webb saw an object drop out of the driver's door onto the curb. A39. Officer Webb initially believed the object was heroin and confirmed this as he approached the Cherokee. A40. Officer Webb directly shined his flashlight on the Cherokee at 2:22:25. Officer Webb's BWC audio began at 2:22:42. Officer Bochanski approached the driver's window and told Price, "You're fine. Relax."¹⁹ Officer Webb said, "Bo, Bo, 15...Bo, 15, 15."²⁰ This was short for the code "10-15" which means to take a person into custody. A40. Officer Webb told Officer Bochanski to take Price into custody because he saw a heroin bundle drop out of the Cherokee when the door opened. A40.

The audio in Officer Bochanski's BWC video began at 2:22:28. An officer said, "roll all your windows down" at 2:22:29. The Cherokee began to move forward at 2:22:32 and officers told the vehicle to "stop" at 2:22:33. Officer Bolden was not visible in the BWC videos before Officer Bochanski spoke to Price. Officer Bolden was first seen at 2:23:03.²¹ Officer Webb believed that Officer Bolden remained in the police vehicle positioned behind the Cherokee. A48. Based upon the BWC

¹⁹ Webb, at 2:22:45

²⁰ Webb, at 2:22:55-2:23:00.

²¹ Ivory, at 2:23:03.

videos, all the officers' firearms remained holstered prior to Price's arrest. Police had Price step from the vehicle and placed him under arrest at 2:23:16.²²

A timeline of events (with appropriate BWC) is below:

- 2:21:58 Officer Ivory steps out of most distant police vehicle. (Ivory)
 - 2:22:00 Officer Bochanski drives up and stops her police vehicle in front of Officer Ivory's and on the opposite side of the street, on the same side as the Cherokee. (Ivory)
 - 2:22:07 Officer Montan is first visible near the Cherokee's passenger side rear bumper.
 - 2:22:09 Officer Webb passes Officer Bochanski's vehicle on foot on the driver's side. (Bochanski)
 - 2:22:17 Officer Bochanski exits her vehicle. (Bochanski).
 - 2:22:18 Cherokee's driver's door opens. (Webb)
- Between 2:22:18 and 2:22:23 the packet of heroin dropped out of the driver's door.
- 2:22:23 Cherokee's driver's door closes. (Webb)
 - 2:22:25 Officer Webb points his flashlight directly at the Cherokee. (Webb)
 - 2:22:30 Officer is heard saying, "Roll all your windows down." (Ivory)
 - 2:22:32 The Cherokee moves forward briefly and officers tell it to "stop." (Webb/Bochanski)
 - 2:22:35 An officer says, "Roll your windows down." (Bochanski)
 - 2:22:36 Officers from the street and sidewalk get close to the Cherokee. (Webb)

²² Bochanski, at 2:23:16.

- 2:22:56 Officer Webb tells Officer Bochanski in code to arrest Price. (Webb)
- 2:22:57 Officer Bochanski asks Price to put his windows down. (Bochanski)
- 2:23:03 Officer Bolden first visible. (Ivory)
- 2:23:05 Officer Webb asks Price to step out of the Cherokee. (Bochanski)
- 2:23:16 Police physically take hold of Price and place him in handcuffs.
(Bochanski)

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT DENIED PRICE'S MOTION TO SUPPRESS EVIDENCE.

Question Presented

Whether the Superior Court abused its discretion or otherwise err by denying Price's Motion to Suppress Evidence.

Standard and Scope of Review

The standard of review for denial of a motion to suppress is abuse of discretion.²³ Although this Court may be “called upon to decide an issue with constitutional dimensions, (this Court’s) standard of review is one of deference to the factual findings of the Superior Court, following an evidentiary hearing.”²⁴ A judge’s legal conclusions are reviewed “*de novo* for errors in formulating or applying legal precepts.”²⁵ A conviction will only be reversed if the Superior Court’s decision is “clearly erroneous.”²⁶

²³ *Holden v. State*, 23 A.3d 843, 846 (Del. 2011)(citing *Lopez-Vazquez v. State*, 956A.2d 1280, 1284 (Del. 2008)).

²⁴ *Woody v. State*, 765 A.2d 1257, 1261 (Del. 2001)(citing *Gregory v. State*, 616 A.2d 1198, 1200 (Del. 1992)).

²⁵ *Williams v. State*, 962 A.2d 210 (Del. 2008)(citing *Lopez-Vazquez* at 1284-85; *Chavous v. State*, 953 A. 2d 282, 286 n.15 (Del. 2008); *Flonnory v. State*, 893 A.2d 507, 515 (Del. 2006); *McAllister v. State*, 807 A.2d 1119, 1123 (Del. 2002)).

²⁶ *Woody* at 1261 (citing *Potts v. State*, 458 A.2d 1165, 1168 (Del. 1983)).

Merits of Argument

The Trial Court's Ruling

As the trial court noted, it is challenging to dissect a situation such as this one because it is dynamic. A54. The court held that police had probable cause to take Price into custody when Officer Webb saw Price drop the heroin packet from the open car door to the ground. A56. The court ruled:

I think everybody, including the defense, agrees that once the police officers see what they believe to have dropped out of the vehicle to be a bundle of heroin, if the Court credits that testimony, which the Court does, given the fact that there is, you know, the other objective evidence of video itself and when things happened, and, you know, what is seen in the photographs and what was collected, that there would be probable cause then certainly to take Mr. Price into custody. A56.

The court addressed when a seizure under *Jones v. State*²⁷ could have taken place:

So the Court finds that, first of all, as far as any seizure itself for the purposes of *Jones*, and I'm well familiar with the standards of *Jones* and what, you know, the courts, the fact that a seizure under Article I, Section 6 of the Delaware Constitution notes that a seizure happens when one, in shorthand, cannot basically resist the police officer's presence, or will have to respond to the police officers when they have shown enough control over the circumstances, and given commands such that one would not believe that they have, you know, can ignore that presence and ignore the intrusion, that the Court finds at very earliest did not happen until after Corporal Webb had noted the dropping of the heroin, and that in fact it was heroin. The earliest that could have been was the 2:22:28 when there is some command about rolling down windows at very least. A56.

²⁷ 745 A.2d 856 (Del. 1999).

The court further discussed the possibility of a seizure taking place (under *Jones*) earlier than 2:22:28. A56. The court ruled:

If the Court were to find that the seizure began anywhere earlier than that, I do believe that there was reasonable articulable suspicion in this case, and I likened the facts of this case to that in *Terry vs. Ohio* from the very beginning. In Delaware, individuals are protected from unreasonable seizures by the Fourth Amendment and Article I, Section 6, but it's only those seizures that are unreasonable that run afoul of either or both. And when a police officer has reasonable articulable suspicion, they may conduct a brief investigatory stop of the person. Here, the Court finds that based on the 911 call, the facts that were known to Corporal Webb, what he had in his experience and his concern at that time, that there could have been a more intrusive stop or seizure from the time the police first noticed the vehicle. A56.

Finally, the court held that police could have made a brief investigatory seizure of Price and the Cherokee because they witnessed a violation of section 4180 of Title 21 in their presence. A56.

A. Police seized Price after they had probable cause to believe he committed a criminal violation.

Price contends that the court erred when it applied a definition of seizure more like the United States Supreme Court's decision in *California v. Hodari D.*²⁸ than this Court's definition in *Jones*. Price is incorrect. *Hodari* held that "(t)he word 'seizure' readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. It does not remotely apply, however, to the prospect of a policeman yelling 'Stop, in the name

²⁸ 499 U.S. 621 (1991).

of the law!’ at a fleeing form that continues to flee. That is no seizure.”²⁹ In *Jones*, this Court ruled that *Hodari*’s definition of “seizure” was inconsistent with Article 1, §6 of the Delaware Constitution.³⁰ *Jones* found that determining the timing of a seizure “requires focusing upon the police officer’s actions to determine when a reasonable person would have believed he or she was not free to ignore the police presence.”³¹ Price attempts to parse the court’s ruling to suggest that it requires physical force, restraint, or verbal commands and that these requirements violate *Jones*. Price misinterprets the trial court’s ruling. The trial court ruled “that a seizure happens when one...cannot basically resist the police officer’s *presence*.” This is similar to the language of *Jones* and does not require physical resistance. Similarly, Price argues that the court’s language that an individual must “respond to the police officers when they have shown enough control” indicates the court’s failure to follow *Jones*.³² The trial court’s full quote was, “will have to respond to the police officers when they have shown enough control *over the circumstances*.” A56 (emphasis added). Although he included the full quote earlier, Price omitted the italicized language in his argument. The italicized language shows that the court did not consider only physical control, but verbal and other collateral command of the

²⁹ *Hodari D.*, 499 U.S. at 626.

³⁰ *Jones*, 745 A.2d at 863-864.

³¹ *Id.* at 869.

³² Op. Br. at 12.

situation as contemplated by *Jones*. This comports with the principles espoused by *Jones* and the Delaware Constitution. The trial court’s ruling was consistent with and followed *Jones*.

Price avers that even if the trial court’s standard was consistent with the Delaware Constitution, its ruling was incorrect. Not so. Price argues that this Court should find that he was seized when the three police vehicles “parked in front of and behind the Jeep on a residential street and trained their headlights on the Jeep.”³³ Price mischaracterizes the evidence. Officer Ivory and Officer Bochanski’s police vehicles were certainly “in front of” Price (as opposed to behind), but both were multiple car lengths down the road from Price. Price was not boxed-in or otherwise obstructed from driving away. Moreover, Officer Ivory’s vehicle was on the opposite side of the road, so his headlights were hardly “trained” on the Jeep. It was after 2 a.m., so the police vehicles necessarily had their headlights on. These were not spotlights and none of the police vehicles activated their emergency lights.

This Court has held that “law enforcement officers are permitted to initiate contact with citizens on the street for the purpose of asking questions.”³⁴ The facts in *Williams v. State* are similar to the instant case. Williams was walking down a highway median at 3:50 a.m.³⁵ An officer stopped to check on Williams because the

³³ Op. Br. at 13.

³⁴ *Williams*, 962 A.2d at 210.

³⁵ *Id.* at 213.

weather was cold and windy.³⁶ The officer stopped his car 10 feet behind Williams, activated his strobe light, but not his emergency equipment, and spoke with Williams.³⁷ The officer asked Williams for his name and date of birth, and Williams supplied them.³⁸ The entire encounter lasted two to three minutes and Williams continued walking.³⁹ After Williams and the officer separated, the officer searched Williams' information in his vehicle computer, determined that Williams had outstanding arrest warrants, recontacted him, and placed him under arrest.⁴⁰

This Court held that Williams was not seized by the officer's initial contact.⁴¹ The Court noted that it was cold and windy, 3:50 a.m., that the officer parked 10 feet behind Williams, and activated his strobe light and not his emergency flashers.⁴² The officer asked Williams if he needed a ride, and Williams proceeded on his way.⁴³ This Court ruled, "Under the Fourth Amendment, this encounter lacked the physical force or submission to the assertion of authority to amount to a seizure" and under a totality of circumstances, "a reasonable person would believe he was free to ignore the police presence."⁴⁴

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 214-215.

⁴² *Id.* at 215.

⁴³ *Id.* at 216.

⁴⁴ *Id.*

While *Williams* involved a single officer, the additional officers do not change the calculus here. It was after 2 a.m. and police were responding to a 911 call (contrasted with the lack of such a call in *Williams*). The 911 caller explained that the Cherokee had been running outside for over an hour. Officer Webb explained his experience caused him to suspect the possibility of vehicle thefts or burglaries. Nevertheless, police were reserved in their approach. They approached slowly on foot. They used the headlights of their police vehicles only. Based on the BWC videos, it is unclear whether Price could even ascertain that they were police vehicles. They did not box-in Price's Jeep or block the road. Despite Price's assertion that they were "armed officers approaching on foot"⁴⁵, none of the officers drew their weapons. Officer Webb only shined his flashlight directly on the Jeep after the door opened and the heroin packet fell to the ground. Although Officer Webb believed that the officers may have requested that Price roll down his windows prior to the audio of the BWCs, there is no other conversation apparent from the officers' silent action. The officers gave Price no commands or other verbal indication that compliance was required. Without any other discussion, Price opened his driver's door, dropped a heroin packet to the ground, and closed the door again. Although Price suggests that the circumstances prevented him from driving away, he started driving forward before officers directed him to "stop".

⁴⁵ Op. Br. at 14.

Price contends that the trial court erred when it found that none of the officers had “gotten close enough to the vehicle to really make any types of commands.” A55. He argues that his contention is supported by Officer Ivory’s BWC at 2:22:18, where he claims that “one officer is standing just outside the passenger side of the Jeep...”⁴⁶ However, the video shows Officer Montan at the rear of the Cherokee and it appears that she stays in the area of the passenger side rear bumper. At 2:22:18, Officers Ivory and Webb are still moving toward the Jeep. Officer Ivory subsequently took up a position near the front passenger door.⁴⁷ Price suggests that the Court’s finding was inconsistent with Officer Webb’s testimony. A47. This is incorrect. Officer Webb testified that they issued no commands, and that he thought they only requested that Price roll down his windows. A47.

Price avers that the court inappropriately considered that two of the officers were training when it determined that the officers’ approach was not a seizure under *Jones*. He contends, “there were 5 uniformed officers with firearms and three marked police SUVs surrounding the Jeep. This can be threatening to a reasonable person.”⁴⁸ Price overstates the situation. The five officers did not approach the vehicle at once. Officer Webb testified that he believed Officer Bolden remained in

⁴⁶ Op. Br. at 15.

⁴⁷ Ivory, at 2:22:30

⁴⁸ Op. Br. at 16.

the police vehicle. A48. Officer Bolden is not seen on BWC video until 2:23:03.⁴⁹ The BWC videos show that three police vehicles were nearby, but Price was not “surrounded.” As previously discussed, the BWC videos show that none of the officers drew their firearms prior to Price’s arrest. The court did not improperly consider that two of the officers were training. It held:

The mere approach by the police officers and the way they did it at that time of the morning in those circumstances the Court does not find rises to a seizure under *Jones*, it is a product of the way the police officers happened to be responding that day, that there happened to be two police officers in each car because of the FTO situation. A56.

The court’s holding appears to be in response to Officer Webb’s testimony and Price’s counsel (“trial counsel”) argument earlier. During cross-examination, the following exchange took place:

TRIAL COUNSEL: Okay. Would it be typical for five officers to initiate a stop for what you’re saying, being parked on the wrong side of the road?

WEBB: That’s difficult to answer. It could be in this circumstance when we have field training officers with rookies, it could be very well, yes.

TRIAL COUNSEL: Five officers?

WEBB: Well, we don’t necessarily, when it -- if I can explain -- when it comes to our field training officers, we don’t necessarily count as a two-person car. Our training rookie is our primary focus. So if you’re asking if it’s normal that

⁴⁹ Ivory, at 2:23:03.

five officers would approach, no, if we were in separate cars, but in the instance of acting as field training officers, yes, it can be common that five officers total being three cars could respond.

TRIAL COUNSEL: Because three cars would respond to an alleged traffic violation?

WEBB: Suspicious vehicle, yes. A43.

Trial counsel's questions suggested that police used an overwhelming show of force for a minor infraction. Trial counsel argued the relevancy of the number of officers later:

It's the defense's position that Mr. Price's vehicle was seized as the officers are walking up shouting commands, the officers are approaching from all sides of the vehicle at that time, there's one police vehicle behind him, two police vehicles in front of him, and five officers, some of them are in close proximity of the car, the others are approaching the car at that point...A48.

The court's mention of the FTO situation appears to be addressing trial counsel's questions to Officer Webb and Price's argument about the number of police officers involved. The facts here are dissimilar from those in *Flonnory v. State*.⁵⁰ There, this Court held that a seizure took place when three police officers responding to an anonymous tip that a vehicle occupant possessed an illegal substance took up

⁵⁰ 805 A.2d 854 (Del. 2001).

positions at the driver's door, passenger door, and rear of the vehicle.⁵¹ Here, BWC videos from 2:22:18 to 2:22:23 show that Officers Webb and Ivory were still approaching the Cherokee when Price opened the driver's door and dropped a heroin packet to the ground. This act gave police probable cause to take Price into custody for heroin possession before they took up positions around the vehicle.

Price argues that the court ignored the effect of the officers' flashlights in making its determination. The State is unaware of any Delaware authority that equates use of a flashlight to a seizure. However, other jurisdictions have held that use of a flashlight does not constitute a seizure.⁵² In *United States v. Martin*, the court held that "an officer shining a flashlight into the interior of a vehicle from a position outside the vehicle does not constitute a seizure."⁵³ In *United States v. Hayden*, the court held that "shining a flashlight to illuminate a person in the darkness is not a coercive act that communicates an official order to stop or comply."⁵⁴ Similarly, shining a spotlight on a car did not constitute a seizure.⁵⁵ Officer Montan was standing at the passenger side rear bumper of the Cherokee. The simple act of shining a flashlight on a vehicle at 2 a.m. should not be given the

⁵¹ *Id.* at 856-858.

⁵² The State notes that each of these jurisdictions follows the *Hodari D.* standard for searches and seizures.

⁵³ 618 F.Supp. 3d 205, 214 (W.D. Pa. 2022)

⁵⁴ 759 F.3d 842, 847 (8th Cir. 2014).

⁵⁵ *United States v. Lawhorn*, 735 F.3d 817 (8th Cir. 2013).

same weight as using emergency flashers or issuing verbal commands. The flashlight was not used to direct Price to move in a particular direction or act in any way. Officer Montan's flashlight use, as well as that of the other officers, was done to light the area in the darkness and was non-coercive.

B. The 911 call in conjunction with Officer Webb's observations and experience provided reasonable, articulable suspicion to detain Price for investigatory purposes.

Price argues that the 911 call did not provide reasonable articulable suspicion that he or the Cherokee were engaged in criminal activity. Price's argument is unavailing. "A police officer may detain an individual for investigatory purposes if the officer has a reasonable, articulable suspicion that the individual is engaged in criminal activity. Reasonable suspicion is a less demanding standard than probable cause. It depends on the 'the officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.' In determining whether reasonable suspicion exists, the court looks at 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.'"⁵⁶

Here, the Superior Court held that "when a police officer has reasonable articulable suspicion, they may conduct a brief investigatory stop of the person."

⁵⁶ *Hall v. State*, 981 A.2d 1106, 1111 (Del. 2009)(citations omitted).

A56. The court found that a stop of this nature was justified “based on the 911 call, the facts that were known to Corporal Webb, what he had in his experience and his concern at that time...” A56. The 911 caller reported a description of the Cherokee and its occupant, including the occupant’s clothing, facial hair, age, complexion and hairline.⁵⁷ The 911 caller reported that the Cherokee had been there over an hour.⁵⁸ The caller expressed concern that the occupant was “casing houses.”⁵⁹ Officer Webb was concerned that the Cherokee was not regular to the area, it was 2 a.m., the Cherokee had been running for over an hour, and based on his experience, he had similar situations where occupants were engaged in theft of vehicles or burglary. A38; A54. As the court noted, although Officer Webb did not hear the entire 911 call, he and the caller had some of the same concerns about theft or burglary. A54. During the suppression hearing, trial counsel suggested that police were required to talk to the 911 caller before approaching the vehicle.⁶⁰ A49. Trial counsel conceded that police could approach the car and attempt a consensual encounter.⁶¹ A49.

The Superior Court did not err when it held that police had reasonable articulable suspicion to engage in a brief investigatory detention. A limited intrusion

⁵⁷ 911 Call at :11-2:39.

⁵⁸ 911 Call at 1:04-1:15.

⁵⁹ 911 Call at :40-:48.

⁶⁰ Trial Counsel: I think it’s incumbent upon the police to then touch base with that neighbor and say, what is it about this vehicle that’s the problem.

⁶¹ Trial Counsel: Sure, they’re allowed to approach the car, and they could have attempted a consensual encounter at that point.

under those circumstances is reasonable under the Fourth Amendment.⁶² “For each encounter between a private citizen and a law enforcement agent, the degree of suspicion required varies with the nature of the seizure.”⁶³ The 911 caller expressed concern about the vehicle and conveyed that it had been running for over an hour. It was 2 a.m. Although Officer Webb was unaware that the 911 caller had made a previous call about the Cherokee, his own experience as a police officer was consistent with occupants engaged in theft of vehicles or burglary.

Price further argues that the court failed to find that Officer Webb had reasonable suspicion of criminal activity. He misapprehends the record. The court reviewed its factual findings and discussed the reasonable articulable suspicion regarding the call and Webb’s experience:

And what was known from the concerned citizen’s call is that there was a vehicle that, as Corporal Webb indicated, wasn’t regular to that area, this is a residential neighborhood. He noted the other things that were particularly concerning was that it was two in the morning, that it had been running for over an hour, and been occupied for over an hour sitting outside, you know, residences. And there was nothing known about the driver of the vehicle, but, you know, one concern in his experience as a police officer is that that could be consistent with someone who may be considering burglary or theft in the area, that that type of behavior in a residential neighborhood like that at least gave suspicion.

And perhaps that’s exactly why the, you know, he did not know what the 911 caller said, I don’t know if this guy’s casing these houses or

⁶² *Terry v. Ohio*, 392 U.S. 1 at 30-31 (1968); *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001).

⁶³ *Robertson v. State*, 596 A.2d 1345, 1350 (Del. 1991).

what. So, interestingly, a citizen has some of the same concerns. Although that portion of it had not been articulated to Corporal Webb, but Corporal Webb from his own knowledge and experience of how the vehicle was seated there and what he had had of that call is are we looking at a vehicle that might be engaged in a burglary or theft of the area?

Sometimes it helps to go back to the beginning of where reasonable articulable suspicion came from. And if you looked at the facts of *Terry vs. Ohio*, we're talking about one police officer who sees a pedestrian and says, the way he's acting outside this store is really consistent with somebody who is basically casing this store for theft, or something of the like, interesting parallel, but as he's walking up. So that's what they are there for.

And the Court finds that it certainly would be reasonable for police to attend to that 911 call and actually make contact with the vehicle. A54-55.

The trial court noted Officer Webb's testimony that the Cherokee was not regular to the neighborhood, it was 2 a.m., and that it had been running for over an hour outside residences. The court also mentioned Officer Webb's experience that led him to suspect that the behavior was consistent with a person considering committing a burglary or theft in the neighborhood. These circumstances, coupled with Officer Webb's experience, and the fact that police were responding to a 911 call, created a reasonable basis for police to engage in a brief investigatory stop of the Cherokee and Price.

C. The observable traffic violation provided a basis to seize Price.

Price also argues that the court erred when it found that a parking violation justified the seizure of Price and his vehicle. Price contends that “the trial court relied on facts unrelated to the basis of the officers’ initial investigation, stop and subsequent search- the purportedly illegally parked car.”⁶⁴ His argument is unavailing. “Police may stop and detain a motorist whom they reasonably suspect of criminal activity, which includes violation of our traffic laws.”⁶⁵ Officer Webb testified that the Cherokee was parked on the wrong side of the road in violation of Title 21. A39. He and the other officers approached the Cherokee based upon the initial 911 call, and not based upon the observable Title 21 violation. A43. The reasonableness of an officer’s reasonable articulable suspicion is based upon an objective, not subjective, standard.⁶⁶ “In other words, the objective facts are viewed through the lens of a reasonable, trained police officer.”⁶⁷ In *West v State*, an officer followed a car that was driving erratically, weaving back and forth in a lane, and narrowly missed colliding with a concrete island.⁶⁸ The officer testified that he pulled the car over for operator safety and a welfare check, but did not intend to

⁶⁴ Op. Br. at 20.

⁶⁵ *Houston v. State*, 251 A.3d 102, 108-109 (Del. 2021) (citing *State v. Prouse*, 382 A.2d 1359, 1364 (Del. 1978), *aff’d*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)).

⁶⁶ *West v. State*, 143 A.3d 712, 716 (Del. 2016).

⁶⁷ *Id.* at 716-717.

⁶⁸ *Id.* at 714.

write the driver a traffic ticket.⁶⁹ The officer also believed that he initially did not have “sufficient cause to stop” the driver.⁷⁰ As it does here, the Court had the advantage of video in *West*. The Court concluded that despite the officer’s subjective belief, he had a reasonable, articulable suspicion to stop the vehicle and investigate whether the driver was under the influence.⁷¹

Here, the trial court noted this objective standard during oral argument at the suppression hearing and trial counsel agreed with the state of the law. A50. Price also conceded that being parked on the wrong side of the roadway was a parking violation. A50. Price’s reliance on this Court’s decision in *Reed v. State*⁷² is misplaced. In *Reed*, police responded to an anonymous complaint of a suspicious car and found Reed in an idling car in an alley.⁷³ The *Reed* trial court ruled that police were able to conduct a pat-down after they asked Reed for his identification, registration, and proof of insurance and he could not provide them.⁷⁴ Reed was charged with driving while license suspended or revoked and no proof of insurance.⁷⁵ These status offenses were not determined until police made contact with Reed. The distinction between *Reed* and the present case is that police had an

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 717.

⁷² 2014 WL 1494098 (Del. Apr. 14, 2014).

⁷³ *Id.* at *1.

⁷⁴ *Id.*

⁷⁵ *Id.*

observable traffic violation before they ever contacted Price. They were permitted to engage in a traffic stop, limited in scope by the purpose of the stop, and ask Price for his “name, address, business abroad, and destination” since he had committed a traffic violation.⁷⁶ Officer Webb observed an objective traffic violation, and police were permitted to engage in a brief investigatory stop consistent with this Court’s holding in *Caldwell*.

⁷⁶ *Caldwell v. State*, 780 A.2d 1037, 1049 (Del. 2001); 11 *Del. C.* §1902.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

/s/ David Hume, IV
Bar I.D. No. 3706
Deputy Attorney General
Department of Justice
13 The Circle
Georgetown, DE 19968
(302) 856-5353

Dated: October 28, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-GHANIYY PRICE)	
)	
Defendant Below-)	
Appellant,)	
)	
v.)	No. 228, 2024
)	
STATE OF DELAWARE,)	On appeal from the
)	Superior Court of the
Plaintiff Below-)	State of Delaware
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 MS Word.
2. This brief complies with the type-volume requirement of Rule 30(d) because it contains 5,928 words, which were counted by MS Word.

/s/ David Hume, IV

David Hume, IV (Bar ID 3706)
Deputy Attorney General

DATE: October 28, 2024