



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

ARTEZZ FINNEY, )  
 )  
 Defendant Below, )  
 Appellant, )  
 ) No. 282, 2024  
 v. )  
 )  
 STATE OF DELAWARE, )  
 )  
 Plaintiff Below, )  
 Appellee. )

**APPELLANT’S OPENING BRIEF**

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**ON APPEAL FROM THE SUPERIOR COURT IN AND OF NEW  
CASTLE COUNTY**

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## **SUMMARY OF THE ARGUMENT**

Artezz Finney's right to be protected from unreasonable search and seizure was violated when police immediately drew their weapons and seized him. The stop of Finney was not based upon reasonable and articulable suspicion and anything recovered as a result should have been suppressed. Moreover, the subsequent inventory search was not conducted in accordance with standard police regulations and procedure for the legitimate purpose of inventorying the car's contents prior to its being towed away. Because these actions exceeded constitutional limits, this Court should reverse the Superior Court and hold that the evidence was obtained in violation of Finney's Fourth Amendment rights. Thus, his convictions must be reversed.

## NATURE AND STAGE OF THE PROCEEDINGS

Artezz Finney (“Finney”) was indicted on charges of possession of a firearm by a person prohibited (“PFBPP”), possession of ammunition by a person prohibited (“PABPP”) and carrying a concealed deadly weapon (“CCDW”), which was later *nolle prossed*. A7. On September 28, 2023, he filed a Motion to Suppress any and all statements and evidence seized as a result of an unlawful stop and search. A10. The State filed a response, and a hearing was held on December 1, 2023. A19. By oral ruling, the Superior Court only suppressed one statement made by Finney and denied all other suppression requests. (See oral ruling, attached as Exhibit A).

Substitution of counsel was made on February 28, 2024. D.I. #28. On March 21, 2024, new counsel filed a motion for leave to file out-of-time motion to suppress. D.I. #28. The trial court denied the motion. D.I. #30.

A two-day jury trial was held on June 11, 2024. Finney was acquitted on the PABPP charge and convicted of PFBPP. D.I. #39. He was sentenced to 15 years at Level 5 followed by various levels of probation. (*See Sentence Order, attached as Ex. B*).

Finney filed a timely notice of appeal. This is his opening brief in support of that appeal.

## STATEMENT OF FACTS

No witnesses testified at the suppression hearing. Thus, the record is derived from Detective Rosembert's Investigative Narrative and the body worn camera footage of the on-site officers. A16.

On June 30, 2023, Sgt. Nolan, Detective Rosembert, and SPO Phelps of the Wilmington Police Department (“WPD”) were on proactive patrol. The initial crime report and the arrest warrant are consistent as to the following: 1) Sgt. Nolan (driver), Det. Rosembert, and SPO Phelps were all in the same unmarked vehicle on patrol headed north bound on Montgomery Street from 4<sup>th</sup> Street. 2) As officers headed north bound, Sgt. Nolan observed a black Chevrolet Malibu parked on the west side of the street (left-hand side of the one-way street). 3) As Sgt. Nolan drove past the black Malibu, he observed a black male subject holding a silver firearm in his right hand. 4) Sgt. Nolan advised the two other officers of his observations and stopped the vehicle. 5) Both Det. Rosembert and SPO Phelps employed their departmentally issued firearms and order the black male to show his hands. 6) As SPO Phelps approached the vehicle from the driver side, he immediately recognized the subject in the driver seat as Artezz Finney. 7) Det. Rosembert drove the black Malibu back to “central”. A16.

The body camera footage<sup>1</sup> shows the officers turning onto the roadway from behind Defendant's vehicle and immediately stopping near Defendant's vehicle. The body camera footage shows the officers exiting their vehicle, drawing their weapons, and surrounding Defendant, while shouting "I will shoot you Artez!" and questioning him about the location of the gun. Upon exiting Sgt. Nolan's vehicle to employ his firearm, Det. Rosebert is heard making a call over the radio "4th and Montgomery, person with a gun." When SPO Phelps applies the handcuffs, he sighs heavily and says "Fucking Artez Finney." 5. On Sgt. Nolan body worn camera, he tells Finney, "Glad it was you and not somebody else."

The body camera footage shows Defendant inside the vehicle holding a cellphone. There is no weapon visible. The footage goes on to show that Defendant immediately complies with officer commands and responds to their questions. Defendant was not advised of his *Miranda* rights. 6. During the inventory search, the body worn camera reveals 1) Officers admit that they did not know who was operating the black Malibu at the time of the detention/arrest. 2) Officer Macnamara reaching into the back seat and grabbing a firearm and stating, "there it is."

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<sup>1</sup> See Body Camera Footage of Detective Rosebert, beginning at approximately 1:42 minutes.



**I. BECAUSE POLICE STOPPED FINNEY WITHOUT REASONABLE ARTICULABLE SUSPICION AND CONDUCTED AN UNLAWFUL INVENTORY SEARCH, ANY AND ALL EVIDENCE SEIZED MUST BE SUPPRESSED.**

***Question Presented***

Whether police can immediately arrest an individual for mere possession of a firearm, before developing the facts necessary to draw an inference of criminal activity and/or a belief that there was a risk of death or serious physical injury and subsequently conduct an inventory search of the vehicle that deviated from standardized police procedures? The issue was preserved by a motion to suppress. A6.

***Standard And Scope Of Review***

When reviewing a denial of a motion to suppress evidence, this Court reviews the trial court's legal conclusions *de novo*. When reviewing the trial court's factual findings, this Court determines whether the trial court abused its discretion in deciding whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.<sup>2</sup>

***Argument***

This Court, on *de novo* review, should reverse the Superior Court's finding that the officers' actions were not violative of the U.S. Constitution based on an

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

unjustified seizure. The stop of Finney was not based upon reasonable and articulable suspicion and anything recovered as a result should have been suppressed.<sup>3</sup> Moreover, the inventory search was conducted for an unlawful purpose and any and all evidence seized must also be suppressed.

#### Lack of Reasonable Articulable Suspicion

The United States Constitution provides that individuals are to be free from unreasonable searches and seizures.<sup>4</sup> The Fourth Amendment of the United States Constitution allows police officers to stop an individual for investigatory purposes if the officer has a “reasonable articulable suspicion that the individual to be detained is committing, has committed, or is about to commit a crime.”<sup>5</sup> Moreover, the actions of an officer may not exceed the proper scope of the seizure and any additional intrusive measures must be supported by independent facts, known to the officer at the time.<sup>6</sup> A reasonable suspicion has been defined by the United States Supreme Court as an officer's ability to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[s] the intrusion.”<sup>7</sup> To determine if reasonable articulable suspicion exists, the Court “must examine the totality of the circumstances surrounding the situation

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<sup>3</sup> *Dorsey v. State*, 761 A.2d 807, 821 (Del. 2000).

<sup>4</sup> U.S. Const. amend. IV.

<sup>5</sup> *State v. Henderson*, 892 A.2d 1061, 1064 (Del. 2006) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)).

<sup>6</sup> *Caldwell v. State*, 780 A.2d 1037, 1046 (Del. 2001).

<sup>7</sup> *Terry*, 392 U.S. at 21.

as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts.”<sup>8</sup>

Here, there is no dispute that Finney was in custody. A43. “The next question is: did the police officers have a reasonable and articulable suspicion that criminal activity was taking place when they seized [Finney]?”<sup>9</sup> They did not. Det. Rosembert’s initial crime report, his warrant for Finney’s arrest, his statement over the radio, SPO Phelps seeming surprised that it was Finney, and Sgt. Nolan’s comment to Finney that he was glad it was him, all confirm that the officers did not know who the black male was prior to employing their firearms in Finney’s direction. Without knowing the identity of the black male occupant of the black Malibu, the officers lacked reasonable articulable suspicion that there was a crime. Det. Rosembert did not assert that the black male was pointing the firearm at anyone or anything. As such, there was nothing alleged in the record that would make simple possession of a firearm a crime.

Not only did the officer’s lack reasonable articulable suspicion, they failed to follow the WPD’s Use of Force Policy which states that a police officer shall not point a firearm at any person unless 1) they reasonably believe that person poses an immediate threat of death or serious bodily injury to themselves or another person;

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<sup>8</sup> *United States v. Cortez*, 449 U.S. 411, 417-18 (1981).

<sup>9</sup> *Riley v. State*, 892 A.2d 370, 374 (Del. 2006).

or 2) they are involved in a high risk tactical situation where a reasonable officer would have specific and good faith reason to believe, based on the totality of circumstances, that there exists a risk of death or serious physical injury to themselves or others, such as a felony car stop or the execution of a search warrant in a high risk situation.<sup>10</sup> Based on the record, it is unclear what risk of death or serious physical injury was at the time officers employed their firearms. However, it is clear from the body worn camera that this incident was not a tactical situation as a decision was made in milliseconds to employ their firearms. Thus, the officers failed to develop the facts necessary to draw an inference of criminal activity and/or a belief that there was a risk of death or serious physical injury to anyone.

#### Unlawful Inventory Search

After a lawful arrest, an inventory search of a vehicle may be conducted in preparation for impoundment for the purpose of safeguarding the property for the protection of the owner, the police, and the tow company, but not to gather evidence.<sup>11</sup> This type of inventory search is reasonable and does not violate Fourth Amendment rights. Any evidence of a crime that comes into the “plain view” of the inspecting officer in the course of the inventory search, whether or not related to the offense for which the arrest was made, is admissible.<sup>12</sup>

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<sup>10</sup> Written Directive: 6.7.

<sup>11</sup> *State v. Gwinn*, 301 A.2d 291, 293 (Del.1972).

<sup>12</sup> *Id.*

The first issue is the black Malibu was not lawfully transported to “central.” The WPD’s detailed written manual provides a policy on towing, seizure and release of motor vehicles.<sup>13</sup> Courts have consistently found that police must search a vehicle pursuant to their own policy.<sup>14</sup> In the WPD’s written policies, the only time an officer is permitted to drive an operator’s vehicle is subject to an operator’s arrest and upon the operator giving his consent by signing the “At Scene Parking Authorization Release”. The body worn camera refutes any agreement by Finney for Det. Rosembert to drive the black Malibu as he attempted to give his keys to a third party who was at the scene of the incident. Impoundment is unreasonable when the police fail to offer alternative arrangements.<sup>15</sup>

The second problem is WPD was not authorized to seize the black Malibu. Under WPD’s manual, a vehicle may be towed pursuant to operator arrest when the vehicle creates a hazard and is interfering with normal movement of traffic. No evidence supports a contention that the vehicle interfered with traffic. The vehicle may also be towed when the vehicle is used as evidence in connection with the commission of a crime. Here, the black Malibu was not believed to be used during the commission of any crime.

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<sup>13</sup> Written Directive: 6.34.

<sup>14</sup> *United States v. Kennedy*, 427 F.3d 1136 (8th Cir. 2005); *United States v. Best*, 135 F.3d 1223 (8th Cir. 1998); *United States v. Ramos-Oseguera*, 1520 F.3d 1028 (9th Cir. 1997); *United States v. Johnson*, 936 F.2d 1082 (9th Cir. 1991).

<sup>15</sup> *United States v. Sanders*, 796 F.3d 1241 (10th Cir. 2015); *United States v. Duguay*, 93 F.3d 346 (7th Cir. 1996).

Finally, the search at issue was not a permitted inventory search. WPD's manual on inventory searches is consistent with the way courts have ruled in that it "is a caretaking function of the police and it is no designated, nor intended to be used, as a means of discovering evidence of a crime."<sup>16</sup> However, according to the body worn camera, Officer Macnamara immediately searched behind the seat of the driver and once he located a firearm, he stated, "there it is." That is evidence that refutes a valid inventory search by WPD's manual and by several courts as it strongly indicates the purpose of the search was to find evidence.

The WPD written directive further states that if there is probable cause, there needs to be a valid search warrant, consent, or one of the following 1) incident to arrest, 2) exigency exists, or 3) some other exception to the warrant requirement exists. Here, there was no consent or warrant. Moreover, nothing in the record supports a search incident to arrest when Finney had already been taken away in the patrol vehicle.<sup>17</sup> No exigency exists when the vehicle is in the care custody and control of WPD. No other exception to the warrant requirement existed. Here, the inventory search was not conducted in accordance with standard police regulations

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<sup>16</sup> See *Colorado v. Bertine*, 479 U.S. 367, 375 (1987)(Inventory searches must be non-investigative and "conducted on the basis of something other than suspicion of evidence of criminal activity"); *United States v. Taylor*, 636 F.3d 461 (10th Cir. 2011)( When the police are not seriously inventorying the contents for a legitimate purpose, the evidence should be suppressed); *United States v. Haro-Salcedo*, 107 F.3d 769 (10th Cir. 1997)(A search of a vehicle is not a proper inventory search where the officer used the roadside inventory as a pretextual investigatory search).

<sup>17</sup> *United States v. Chadwick*, 433 U.S. 1, 23 (1977).

and procedure for the legitimate purpose of inventorying the car's contents.<sup>18</sup>

Finney's detention and subsequent arrest violated the well-worn tenets of the United States protections against unlawful search and seizure. Consequently, all evidence obtained as a result of the unlawful seizure should have been suppressed.

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<sup>18</sup> *Lively v. State*, 427 A.2d 882, 883 (Del. 1981).

## **CONCLUSION**

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Artez Finney's convictions should be reversed.

\s\ Santino Ceccotti  
Santino Ceccotti, Esquire

DATE: January 21, 2025