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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTEZZ FINNEY, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	No. 282, 2024 On appeal from the Superior Court of the State of Delaware

STATE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

On August 14, 2023, a Superior Court grand jury indicted Artezz Finney on charges of possession of a firearm by a person prohibited ("PFBPP") and possession of ammunition for a firearm by a person prohibited ("PABPP").[1] A public defender was appointed to represent him.[2]

The following month, Finney filed a motion to suppress his statements and the evidence seized from his vehicle, based solely on an alleged violation of his rights under *Miranda v. Arizona*.[3] At the suppression hearing, because Finney did "not contest[] any of the facts," the Superior Court only watched the officers' body-worn-camera footage and heard argument on the motion.[4] The court granted the motion in part and denied it in part, suppressing only Finney's response to the question, "Damn it, Artezz, what are you doing?"[5]

Sometime after the hearing, Finney retained new, private counsel.[6] On March 21, 2024, Finney's new counsel moved for leave

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[1] A1, at Docket Item ("D.I.") 6; A7–8.
[2] B66.
[3] 384 U.S. 436 (1966). A2, at D.I. 10; A9–18.
[4] A2, at D.I. 15; A31–34.
[5] A2, at D.I. 15; A64–65; A69–70.
[6] A3, at D.I. 25; B67.

to file a second suppression motion out of time and attached the proposed second motion as an exhibit.[7] The Superior Court denied the motion for leave.[8] Finney filed a motion for reconsideration, which the court also denied.[9]

Finney's case proceeded to trial in June 2024.[10] The jury found him guilty of PFBPP but not guilty of PABPP.[11] The Superior Court sentenced Finney on July 1, 2024, to 15 years at Level V incarceration, suspended after 10 years for 18 months at Level III probation.[12]

Finney filed a timely notice of appeal. He filed his opening brief on January 21, 2025. This is the State's answering brief.

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[7] A3, at D.I. 28; B15–64.
[8] A3–4, at D.I. 29–30.
[9] A4, at D.I. 31–32; B65–73.
[10] A5, at D.I. 39.
[11] A5, at D.I. 39.
[12] Opening Br. Ex. B, at 1.

SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. Finney did not fairly present his questions on appeal—whether the officers lacked reasonable articulable suspicion to detain him and whether the officers lawfully conducted an inventory search of his vehicle—to the Superior Court below. The mere filing of a suppression motion, which was based on a different theory under a different constitutional amendment, was insufficient to preserve these questions. Accordingly, this Court reviews the questions only for plain error, which Finney fails to establish. The officers observed Finney, who they immediately recognized and knew to be a person prohibited, holding a firearm in his right hand while sitting in the driver's seat of a car. These facts established probable cause to arrest Finney, let alone reasonable suspicion to detain him. When the officers reached Finney, he no longer had the firearm in hand and indicated it was in the backseat area of the car. Therefore, it was fairly probable that the officers would find evidence of the crime in the car, and they could lawfully search it under the automobile exception to the warrant requirement.

STATEMENT OF FACTS

The State adopts the facts as the Superior Court recited them from the bench in its ruling on Finney's motion to suppress. Finney did "not contest[] any of the facts" for purposes of the suppression motion.[13] He asked the court to rule on the papers, which included the police report and body-worn-camera footage.[14] Because the facts were undisputed, the court recited the more-detailed facts from the State's motion and described the body-worn-camera footage, which Finney played at the hearing.[15] The court began:

> On June 30th, 2023, Wilmington Police Department Officers Sergeant Nolan and Detective [Rosembert], along with Senior Probation and Parole Officer Justin Phelps, were on proactive patrol in the Center City section [of] Wilmington.
>
> Sergeant Nolan was driving the undercover police vehicle, with Detective [Rosembert] in the front passenger seat and SPO Phelps seated in the rear.
>
> As the police vehicle traveled down West 4th Street, officers observed a black Chevy Malibu parked on Montgomery Street.
>
> As Sergeant Nolan turned onto Montgomery Street, both he and SPO Phelps looked over at the Chevy Malibu and

[13] A31–32.
[14] A30–34; *see also* A10 nn.1–2 & Exs. A–B; A30–34; B8; B8 n.20.
[15] A56–58; A63–68.

> observed the driver holding a silver firearm in his right hand.
>
> SPO Phelps immediately recognized the driver as Artezz Finney, the Defendant, from prior police contacts.
>
> SPO Phelps knew Finney was a convicted felon and on active probation for a felony charge, thereby prohibiting Finney from possessing a firearm.
>
> Sergeant Nolan immediately stopped the vehicle.
>
> All three officers exited and approached the Chevy Malibu with their weapons drawn.
>
> The officers told Finney to put his hands up and not to reach for the weapon. Finney complied.[16]

From the body-worn-camera footage, the court described the ensuing exchange between Finney and the officers:

> At this time, you see Detective [Rosembert] exit the vehicle, and hear him radio, "Person with a gun."
>
> He and other officers draw their weapon[s] and quickly approach Finney's car.
>
> As the officers initially approach, they give Finney commands.
>
> The first question asked of Finney by SPO Phelps is, as he is removing his seat belt, "Where is the gun?" "Where is the gun?"

[16] A56–57.

> Finney responds, "It's back there. It's my wife's gun, not mine."[17]

In saying "back there," Finney was indicating to the back of the car.[18]

Next, SPO Phelps asks or exclaims, "Damn it, Artezz, what are you doing?"[19] Finney responded, "I just seen it. I picked it up. Like, what the hell."[20]

From then on, the police did not ask any questions that amounted to an interrogation.[21] But Finney went on to make several unsolicited statements about picking up the firearm.[22]

Regarding the rest of the police investigation, the Superior Court recounted:

> Finney was the only occupant of the vehicle.
>
> While patting Finney down, a large crowd of people began to walk in the officers' direction. For safety reasons the officers transported Finney to the Wilmington Police Department, along with the Chevy Malibu, prior to an inventory search being conducted.
>
> The inventory search of the Chevy Malibu occurred at the Wilmington Police Department.

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[17] A63.
[18] A57.
[19] A64.
[20] A57–58; A69–70.
[21] A65.
[22] A66.

There, police found a silver SIG .45 caliber firearm lying on the rear floorboard behind the driver's seat.

Police arrested the Defendant for Possession of a Firearm by a Person Prohibited.[23]

[23] A58.

ARGUMENT

I. There is no plain error: the officers had reasonable suspicion to detain Finney and probable cause to search his vehicle.

Question Presented

Whether the Superior Court's decision to not suppress evidence constitutes plain error when the officers detained a known person prohibited and searched his vehicle after they observed that person holding a firearm in his hand while sitting in the vehicle, that person was no longer holding the firearm when they reached him, and that person indicated the firearm was now in the back of the vehicle.

Scope of Review

This Court reviews questions that were not fairly presented to the trial court for plain error.[24] To constitute plain error, the alleged defect "must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[25] The doctrine is limited to basic, serious, fundamental, and material defects

[24] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).
[25] *Id.*

apparent on the face of the record that clearly deprive the accused of a substantial right or clearly show manifest injustice.[26]

Merits of Argument

For the first time on appeal, Finney claims that the police lacked reasonable suspicion to detain him and then conducted an unlawful inventory search of his vehicle.[27] He did not dispute the facts at the suppression hearing but now contends that the officers did not know his identity when they first detained him. Thus, Finney argues, the officers did not yet have reason to suspect that the person holding the firearm was prohibited and committing a crime.[28] He further argues that the subsequent search of his motor vehicle was an inventory search conducted in violation of departmental policy.[29]

Finney did not fairly present these questions to the Superior Court below. The only argument he advanced to support his suppression motion was based on a violation of his *Miranda* rights under the Fifth Amendment to the United States Constitution. This

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[26] *Id.*
[27] *See* Opening Br. 5–11.
[28] Opening Br. 7.
[29] Opening Br. 8–11.

Court therefore reviews his new Fourth Amendment claims only for plain error. And there is none. The officers had reasonable suspicion to detain Finney and probable cause to conduct the subsequent search of his motor vehicle.

A. Finney did not fairly present his questions to the Superior Court.

Under Rule 8, this Court will not review questions on appeal that were not fairly presented to the trial court below. The prohibition applies to both specific objections and the supporting arguments.[30] A narrow exception allows review of questions not fairly presented "when the interests of justice so require."[31] This "extremely limited" exception invokes the plain-error standard of review.[32]

Finney filed a motion to suppress in the Superior Court, but that motion did not present the same questions that he now asks this Court to consider. Below, he argued that the officers violated his *Miranda* rights and that, as a consequence, his statements and the evidence

[30] *Russell v. State*, 5 A.3d 622, 627 (Del. 2010).
[31] Supr. Ct. R. 8.
[32] *Russell*, 5 A.3d at 627.

seized from his vehicle should be suppressed.[33] The rights guaranteed by *Miranda* derive from the Fifth Amendment protection against self-incrimination.[34] Now, he presents an entirely different theory for suppression under a different constitutional provision, the Fourth Amendment: that the officers lacked reasonable articulable suspicion to detain him and then conducted an unlawful inventory search of his vehicle.[35] Finney did not advance these latter arguments in his suppression motion and therefore did not give the Superior Court a fair opportunity to resolve them.

Appellants do not preserve their constitutional claims for appeal merely by filing a suppression motion, when the theory advanced below was categorically different than the theory advanced on appeal. For example, in *Moody v. State*,[36] the appellant had argued in the Superior Court that the police lacked reasonable articulable suspicion to detain him, but on appeal, he attempted to reframe the question by arguing that the police lacked probable cause to arrest and search him. This Court refused to consider the probable-cause question because

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[33] A11.
[34] *Marine v. State*, 607 A.2d 1185, 1191–92 (Del. 1992).
[35] Opening Br. 5–11.
[36] 2006 WL 2661142, at *2 (Del. Aug. 24, 2006).

the appellant did not fairly present it below.[37] Similarly, in *Turner v. State*,[38] the defendant's first counsel filed a motion to suppress on Fifth Amendment grounds, and his second counsel attempted to make a Sixth Amendment argument at the suppression hearing, but the Superior Court refused to consider an argument that was not stated in the motion. This Court held that the trial judge did not abuse his discretion by refusing to consider the merits of the Sixth Amendment claim.[39] Consequently, the Sixth Amendment question was not fairly presented, and this Court reviewed it only for plain error.[40] Like the appellants in *Moody* and *Turner*, Finney did not preserve his Fourth Amendment arguments merely by filing a suppression motion that advanced a wholly different constitutional theory.

Finney's second trial counsel hoped to present the Fourth Amendment arguments in a second, untimely suppression motion, but the Superior Court rebuffed her attempt.[41] On the motion to reconsider the denial of leave to file a second suppression motion out

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[37] *Id.*
[38] 957 A.2d 565, 572–73 (Del. 2008).
[39] *Id.* at 573.
[40] *Id.* at 573–74.
[41] B15–64.

of time, the Superior Court held that Finney was not entitled to "a second bite of the apple" on suppression issues.[42] The Court explained that it has broad discretion to enforce its pretrial orders, that its earlier decision on the timely first suppression motion involved a finding of probable cause that would effectively resolve the newly proffered issues, and that Finney's change in representation did not justify modifying its scheduling order to accommodate a second and untimely suppression hearing.[43]

The Superior Court identified the correct standards and reasonably applied them. The court has broad discretion to enforce its rules of procedure and pre-trial orders.[44] Enforcing those rules and orders does not constitute an abuse of discretion unless there are exceptional circumstances sufficient to outweigh the countervailing interest in ensuring the timely and orderly processing of the criminal docket.[45] A change in counsel is not usually a sufficient excuse for filing an untimely suppression motion.[46] Accordingly, the Superior

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[42] B71.
[43] B69–72.
[44] *Miller v. State*, 2010 WL 3328004, at *2 (Del. Aug. 24, 2010); *Barnett v. State*, 691 A.2d 614, 616 (Del. 1997).
[45] *Miller*, 2010 WL 3328004, at *2.
[46] *Id.*; *Barnett*, 691 A.2d at 616.

Court did not abuse its discretion by denying Finney leave to file a second suppression motion out of time, and Finney's attempt to do so was insufficient to preserve the Fourth Amendment questions for appeal under Supreme Court Rule 8.[47]

Notably, Finney does not rely on the proposed second motion in arguing that he preserved the questions below.[48] He makes only a cursory mention of the motion for leave in his procedural history and did not attach it to his opening brief.[49] He also does not contest the orders denying him leave to file a second suppression motion out of time or reconsideration.

For all these reasons, Finney did not fairly present his Fourth Amendment questions to the Superior Court. Consequently, they can be reviewed only for plain error.

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[47] *See Turner*, 957 A.2d at 572–73.
[48] Opening Br. 5 (citing only A6).
[49] *See* Opening Br. 2 & Exs. A–B; A1–71.

B. There is no plain error.

1. The officers, who saw Finney holding a firearm and knew him to be a person prohibited, had reasonable articulable suspicion to detain him.

Finney first argues that the officers lacked reasonable suspicion to detain him. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, house, papers, and affects, against unreasonable searches and seizures." Its essential purpose is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to safeguard the privacy and security of individuals against arbitrary invasions."[50] For that reason, "some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure."[51] The Fourth Amendment's requirements apply to all seizures of the person, including brief or investigative detentions short of an arrest.[52] Evidence obtained through searches and seizures that violate these guarantees is inadmissible under the exclusionary rule.[53]

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[50] *West v. State*, 143 A.3d 712, 715–16 (Del. 2016) (quotation marks omitted) (quoting *Delaware v. Prouse*, 440 U.S. 648, 653–54 (1979)).
[51] *United States v. Martinez-Fuerte*, 428 U.S. 543, 560–61 (1976).
[52] *Brown v. Texas*, 443 U.S. 47, 50 (1979).
[53] *Diggs v. State*, 257 A.3d 993, 1003 (Del. 2021).

A law-enforcement officer may stop or detain someone for investigatory purposes only if the officer has reasonable articulable suspicion to believe that the person is committing, has committed, or is about to commit a crime.[54] Reasonable suspicion "must be evaluated in the context of 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."[55] The reasonable-suspicion standard is lower than probable cause and need not rule out the possibility of innocent conduct.[56]

The officers in this case had reasonable articulable suspicion to detain Finney. The officers were on proactive patrol in the City of Wilmington, and as they turned onto Montgomery Street, they observed the driver of a Chevrolet Malibu holding a silver firearm in his right hand.[57] SPO Phelps "immediately recognized" the driver as Finney from prior contacts.[58] SPO Phelps knew that Finney was a

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[54] *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001).
[55] *Jones v. State*, 745 A.2d 856, 861 (Del. 1999).
[56] *Diggs*, 257 A.3d at 1004; *State v. Murray*, 213 A.3d 571, 579 (Del. 2019).
[57] A56–57.
[58] A57.

convicted felon and on probation and, therefore, prohibited from possessing a firearm.[59] Those facts—observation of Finney possessing the firearm and knowledge of his prohibited status—supported the reasonable belief that Finney was committing the crime of PFBPP in violation of 11 *Del. C.* § 1448. Indeed, as the Superior Court observed, these facts constituted probable cause to arrest and search Finney,[60] let alone detain him for further investigation.

To contest this conclusion, Finney argues that the officers did not in fact "immediately" recognize him and initiated the detention before they did.[61] According to Finney:

> 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.[62]

Finney waived his right to contest the Superior Court's finding that SPO Phelps "immediately recognized" him. A forfeited allegation can be considered under plain-error review, but a waived

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[59] A57.
[60] A69.
[61] Opening Br. 7.
[62] Opening Br. 7.

right cannot.[63] This Court "indulge[s] every reasonable presumption against finding waiver in the criminal context. . . . [but] also view[s] affirmative statements as a stronger demonstration of waiver than mere absence of an objection."[64] Here, Finney did not merely overlook an objection to the Superior Court's findings of fact: he affirmatively stated that he was "not contesting any of the facts" for purposes of the suppression issue.[65] He asked the Superior Court to decide the motion on the papers, knowing the State alleged in its response that SPO Phelps immediately recognized him.[66] He therefore waived his right to challenge the Superior Court's factual findings on appeal.

In any event, Finney's allegations do not call the Superior Court's findings into question.

Finney first cites Detective Rosembert's police report but does not identify how it supports his position.[67] In the report, Detective Rosembert wrote: "It should be noted, as SPO Phelps approached the

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[63] *Purnell v. State*, 254 A.3d 1053, 1101 (Del. 2021).
[64] *Burrell v. State*, 2024 WL 4929021, at *11 (Del. Dec. 2, 2024).
[65] A31–32.
[66] A31–32; A56–57; B2.
[67] *See* Opening Br. 7.

aforementioned vehicle from the driver side, he immediately recognized the subject in the driver seat as FINNEY from prior contacts."[68] This statement is written after recounting that the officers "immediately stopped" after observing Finney with the firearm and "immediately exited the police vehicle and employed [their] departmentally issued firearms and ordered FINN[E]Y to show his hands."[69]

To the extent Finney argues that the report establishes a definite succession of events, he is wrong. The organization of the report's narrative does not dictate the precise order in which the events actually occurred. The Superior Court reviewed the body-worn-camera footage, which showed the police vehicle driving past Finney's parked Malibu. Thus, when Sergeant Nolan "immediately advised" Detective Rosembert and SPO Phelps that he observed the firearm,[70] the latter two officers also had an opportunity to turn their attention to and observe the Malibu and its driver while the police vehicle came to a stop. Even though the police "immediately"

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[68] A16.
[69] A16.
[70] A16.

employed their firearms and ordered Finney to show his hands, they exited their police vehicle from beyond Finney's Malibu and approached it from the front. Therefore, in that same moment, the officers also "immediately" viewed the driver's face through the windshield. As the body-worn-camera footage shows, these events happened simultaneously—not in succession—consistent with the Superior Court's factual findings.

Finney next cites the arrest warrant, without further explanation.[71] The parties did not submit the arrest warrant for the Superior Court's consideration on the suppression motion, and Finney did not include it in the appendix to his opening brief. It is not part of the record of this appeal, and without any context or explication, does not support his position.

Finney next cites Detective Rosembert's "statement over the radio,"[72] which apparently references his statement, "4th and Montgomery, person with a gun."[73] Finney again does not explain how this statement supports his position, but the implication appears

[71] Opening Br. 7.
[72] Opening Br. 7.
[73] Opening Br. 4.

to be that, if Detective Rosembert had recognized Finney, he would have used his name instead of the generic term "person." First, it was SPO Phelps who knew Finney from prior contacts, not Detective Rosembert. Second, Detective Rosembert was calling in an incident as the officers attempted to successfully detain an armed suspect, not creating a record for suppression. Identifying Finney was unnecessary for that purpose, so the failure to identify him over the radio does not constitute evidence that the officers were ignorant of his identity.

Finney next claims that SPO Phelps "seem[ed] surprised that [the driver of the Malibu] was Finney,"[74] an apparent reference to his statement, "Fucking Artezz Finney."[75] When viewing the body-worn-camera footage, the better characterization of this statement is that SPO Phelps was exasperated with Finney for committing yet another crime so openly. The notion that SPO Phelps was "surprised" to find that the driver was Finney after detaining him is belied by the body-worn-camera footage, which showed SPO Phelps confidently referring to Finney by name when giving him commands at the outset of the detention.

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[74] Opening Br. 7.
[75] Opening Br. 4.

Finney's final citation is to Sergeant Nolan's comment that he was "[g]lad it was you [Finney] and not somebody else."[76] This quotation is only half of Sergeant Nolan's sentence. The full sentence and its context reveal that it was not an expression of surprise that Finney turned out to be the suspect in the vehicle. Sergeant Nolan made this comment to Finney as they were pulling into the Wilmington Police Department. The officers thanked Finney for doing "the right thing" and not giving them a hard time, Finney said that he was too old for that, and then Sergeant Nolan said, "I'm glad it was you and not somebody else 'cause it could have been a bad day for everybody." The comment was an expression of relief that the officers encountered Finney rather than someone who might have reacted to the police presence by turning the firearm on them. The statement does not support the notion that the police did not know Finney's identity when they detained him.

Finally, Finney claims that the officers violated their own use-of-force policy by immediately drawing their firearms to detain him.[77] Finney does not explain how compliance with the Department's use-

[76] Opening Br. 4, 7.
[77] Opening Br. 7–8.

of-force policy factors into the reasonable-suspicion analysis, and he does not cite any authority stating that it does.[78] The reasonable-suspicion inquiry focuses on the facts and circumstances known to the officers before or as they initiate the detention, not the degree to which the ensuing detention complied with departmental policy.

In conclusion, the officers had reasonable articulable suspicion to detain Finney. As the Superior Court found, they observed Finney holding a firearm, immediately recognized him, and knew he was a person prohibited. These facts gave rise not only to reasonable suspicion to detain Finney, but probable cause to arrest him. Finney affirmatively waived his right to challenge the court's factual findings, but in any event, his arguments on appeal do not call those findings into question. Accordingly, he fails to establish plain error.

2. The officers had probable cause to search Finney's vehicle and could do so without a warrant under the automobile exception.

Finney claims that the officers conducted an unlawful inventory search of his vehicle. The officers did not conduct an inventory

[78] Opening Br. 7–8.

search, however: they conducted a warrantless, probable-cause search of the vehicle under the automobile exception. There is no plain error.

Ordinarily, law enforcement must obtain a warrant supported by probable cause before executing a search.[79] Probable cause exists when, in the totality of the circumstances, there is a fair probability that contraband or evidence of a crime will be found in a particular place.[80] There are several well-established exceptions to the warrant requirement, however—such as the automobile exception.[81] Vehicles are mobile by nature, and their mobility increases the likelihood that crucial evidence could be lost or destroyed if not searched for immediately.[82] Under this exception, so long as the police have probable cause to believe that an automobile is carrying contraband or evidence, they may lawfully search the vehicle without a warrant.[83] No additional exigent circumstances are required.[84]

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[79] *Ortiz v. State*, 2004 WL 2741185, at *2 (Del. Nov. 16, 2004) (citing *California v. Carney*, 471 U.S. 386, 390–91 (1985)).
[80] *Cooper v. State*, 228 A.3d 399, 405 (Del. 2020).
[81] *See United States v. Johns*, 469 U.S. 478, 484 (1985).
[82] *Reeder v. State*, 2001 WL 355732, at *2 (Del. Mar. 26, 2001).
[83] *Johns*, 469 U.S. at 484; *Valentine v. State*, 2019 WL 1178765, at *2 (Del. Mar. 12, 2019); *Reeder*, 2001 WL 355732, at *2; *Tatman v. State*, 494 A.2d 1249, 1251 (Del. 1985).
[84] *Johns*, 469 U.S. at 484; *State v. Terry*, 2020 WL 1646775, at *2 (Del. Apr. 2, 2020).

Here, the officers had probable cause to believe that evidence of a crime would be found in Finney's vehicle. The officers observed Finney, a person they knew to be prohibited from possessing a firearm, holding a firearm in his right hand while seated in the front seat of the vehicle.[85] The Superior Court correctly found that these facts established probable cause to arrest Finney. Then, as the officers approached Finney, they noticed that he no longer had the firearm in hand.[86] For safety reasons, they asked Finney where the firearm was, and he said, "back there," indicating the back of the vehicle.[87] These facts made it more than fairly probable that the officers would find the weapon inside the vehicle. Indeed, when the officers opened the rear driver's-side door at the scene of the initial detention, they observed the firearm on the floorboard behind the driver's seat.[88] Because a crowd was gathering, the police transported the vehicle to the Wilmington Police Department to complete the search and seize the firearm.[89]

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[85] A56–57.
[86] *See* A57.
[87] A57.
[88] A16.
[89] A58.

The fact that the police transported the vehicle to a safer location before completing the search does not extinguish application of the automobile exception. "The justification to conduct such a warrantless search does not vanish once the car has been immobilized."[90] Both this Court and the United States Supreme Court have upheld warrantless vehicle searches, not only after law enforcement has secured the vehicle, but even after the officers removed it from the scene. In *Johns*, the United State Supreme Court upheld law enforcement's decision to search a stopped truck at the Drug Enforcement Agency's headquarters rather than at roadside.[91] Likewise, this Court in *Tatman* held that police officers "did not violate the defendant's Fourth Amendment rights by removing the vehicle to the firehouse and conducting the search there."[92] In this case, the police partially searched Finney's vehicle at roadside but needed to move the vehicle to avoid complications posed by the gathering crowd.[93] The automobile exception remained applicable throughout the search and transportation.

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[90] *Johns*, 469 U.S. at 484; *accord Tatman*, 494 A.2d at 1252–53.
[91] *Johns*, 469 U.S. at 483–87.
[92] *Tatman*, 494 A.2d at 1253.
[93] *See* A58.

Finney does not address probable cause or application of the automobile exception because he characterizes the search only as an inventory search.[94] Inventory searches are routine searches, made pursuant to standard police procedures, to safeguard property for the benefit of the owner, police, and tow company and not under pretext to gather evidence without a warrant.[95] The body-worn-camera footage shows the officers opening Finney's rear driver's-side door to look for the firearm, *i.e.*, evidence of the crime. The officers plainly did not conduct a routine inventory search, nor did they claim to conduct one in the police report.[96]

Finney may have framed his argument in this fashion because the Superior Court, in its recitation of the facts, described the vehicle search as an "inventory search."[97] The State likewise called it an "inventory search" in its response to the suppression motion.[98] But the State was not making a legal argument, and the Superior Court was not making a legal conclusion, because Finney did not put the

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[94] Opening Br. 8–11.
[95] *Lively v. State*, 427 A.2d 882, 883 (Del. 1981); *State v. Gwinn*, 301 A.2d 291, 293 (Del. 1972).
[96] *See* A16–17.
[97] A58.
[98] B2.

validity of the vehicle search at issue in his motion to suppress. Finney made only an argument under *Miranda*, so neither the State nor the Superior Court had reason to identify the precise nature and justifications of the vehicle search. Indeed, the prosecutor later made clear that she believed there was probable cause to conduct the search. She stated during argument that the officers "could have gotten a search warrant" and "would have found the gun" even if certain statements were suppressed in violation of *Miranda*.[99] If Finney had fairly presented a question regarding the validity of the search, the State and the Superior Court could have addressed it accordingly.

Finney cannot hold the State or the Superior Court to statements about matters that he failed to fairly put at issue. Ultimately, whether someone called it an inventory search "is inconsequential. . . . What matters is whether the facts establish probable cause—and they do."[100] In fact, Finney appears to implicitly

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[99] A54–55.

[100] *United States v. Vallez*, 733 F. Supp. 3d 1120, 1134 (D.N.M. 2024) (cleaned up); *see also United States v. Kelly*, 961 F.2d 524, 526 (5th Cir. 1992) ("Because we find that the search was a proper warrantless automobile search based on probable cause, we do not reach the [inventory-search] issue[].").

concede there was probable cause to search the vehicle.[101] Given the clear application of the automobile exception, there is no plain error involved in the search of Finney's motor vehicle.

[101] *See* Opening Br. 10 ("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 . . . . Here, there was no consent or warrant.").

CONCLUSION

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

Respectfully submitted,

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Dated: February 24, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTEZZ FINNEY, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	No. 282, 2024 On appeal from the Superior Court of the State of Delaware

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 5,062 words, which were counted by Microsoft Word.

Dated: February 24, 2025

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