



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMETRIS GRAHAM,	)	
	)	
Defendant Below-	)	
Appellant	)	
	)	
v.	)	No. 117, 2026
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-	)	
Appellee	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CITATIONS	i
NATURE AND STAGE OF THE PROCEEDINGS.	1
SUMMARY OF THE ARGUMENT	3
STATEMENT OF FACTS	4
ARGUMENT	
I. THE SUPERIOR COURT CORRECTLY FOUND THAT GRAHAM’S 2016 PENNSYLVANIA CONVICTION FOR DRUG DEALING IN MARIJUANA IS EQUIVALENT TO A DELAWARE VIOLENT FELONY FOR PURPOSES OF SENTENCING FOR GRAHAM’S CURRENT CONVICTION FOR POSSESSION OF A FIREARM BY A PERSON PROHIBITED.....	6
II. GRAHAM WAIVED ANY CLAIM UNDER <i>ERLINGER</i> THAT A JURY MUST DETERMINE WHETHER ENHANCED SENTENCING APPLIES. THE <i>SHEPARD</i> DOCUMENTS SUPPLIED SUFFICIENT INFORMATION FOR THE SUPERIOR COURT TO DETERMINE THAT GRAHAM’S PENNSYLVANIA CONVICTION IS EQUIVALENT TO FORMER 16 DEL. C. § 4754(1)	19
CONCLUSION	22

TABLE OF CITATIONS

<u>Cases</u>	<u>Page</u>
<i>Anderson v. State</i> , 2018 WL 1341714 (Del. March 14, 2018)	21
<i>Butcher v. State</i> , 171 A.3d 537 (Del. 2017)	10, 11, 12, 13, 14
<i>Dahms v. State</i> , 2004 WL 1874650 (Del. 2004).....	13
<i>Erlinger v. United States</i> , 502 U.S. 821 (2024)	3, 20
<i>Lewis v. State</i> , 144 A.3d 1109 (Del. 2016)	13
<i>King v. State</i> , 239 A.2d 707 (Del. 1968).....	19
<i>Rembert v. State</i> , 2025 WL 1805214 (Del. July 1, 2025)	6, 9, 10, 11, 12
<i>Shepard v. United States</i> , 544 U.S. 13 (2005)	8
<i>Unitrin, Inc. v. American Gen. Corp.</i> , 651 A.2d 1361 (Del. 1995).....	21
<i>Valentine v. State</i> , 2019 WL 1178765 (Del. Mar. 12, 2019)	7, 8, 9, 10, 12, 20, 24
<i>Watson v. State</i> , 892 A.2d 366 (Del. 2005)	13, 14
<i>Wright v. State</i> , 980 A.2d 1020 (Del. 2009)	19
 <u>Statutes</u>	
4 <i>Del. C.</i> § 1302	15
11 <i>Del. C.</i> § 211	13
11 <i>Del. C.</i> § 1448	6, 7, 8, 11, 12, 19
11 <i>Del. C.</i> § 4201	8, 11, 21
11 <i>Del. C.</i> § 4214	13

16 <i>Del. C.</i> § 4215A	13
16 <i>Del. C.</i> § 4701	15, 16
16 <i>Del. C.</i> § 4714	13, 14
16 <i>Del. C.</i> § 4750	15
16 <i>Del. C.</i> § 4754	7, 9, 10, 11, 12, 14, 19, 21
16 <i>Del. C.</i> § 4758	9
16 <i>Del. C.</i> § 4763	16
16 <i>Del. C.</i> § 4764	16
16 <i>Del. C.</i> § 4764A	14
16 <i>Del. C.</i> § 4903A	15
35 Pa. Cons. Stat. § 780-104.....	18
35 Pa. Cons. Stat. § 780-113.....	7, 8, 9, 10, 17, 18

NATURE AND STAGE OF THE PROCEEDINGS

On September 2, 2024, Dametris Graham (“Graham”) was arrested and later charged by indictment with one count each of Possession of a Firearm by a Person Prohibited (“PFBPP”), Possession of Ammunition by a Person Prohibited, and Receiving a Stolen Firearm. (DI 2, 6; A-1-2, 5-7).

On June 16, 2025, Graham entered into a plea agreement that resolved this matter and a violation of probation. (A-14-15). He agreed to plead guilty to one count of Possession of a Firearm by a Person Prohibited, and the State would enter a *nolle prosequi* on the other counts (including the pending robbery charges), discharge the VOP, and recommend the minimum mandatory sentence. Graham agreed to restitution in the dismissed robbery case. (A-15-16, 141-42).

The parties agreed to postpone sentencing and submit briefing to the Superior Court, for the judge to resolve their disagreement regarding the applicable minimum mandatory sentence. (A-12-13). The State maintained that Graham’s Pennsylvania convictions comprised two prior violent felonies (10-year minimum mandatory sentence), whereas defense counsel maintained Graham had only been convicted of one prior violent felony (5-year minimum mandatory sentence). (A-13-14). Both potential sentences were reflected on Graham’s Truth-In-Sentencing Guilty Plea Form. (A-12, 18-24). Graham agreed to allow the Superior Court to make this determination. (A-16-17). The parties submitted briefing on the number of prior

convictions that qualify as violent felonies and would determine Graham's minimum-mandatory sentence. (DI 22-23; A-4, 32-37, 76-131).

On February 18, 2026, the parties appeared in Superior Court, and the court rendered its decision and sentenced Graham. (A-4, 133-48). The Superior Court found there was no dispute that Graham's April 13, 2023 Pennsylvania robbery conviction was a violent felony, and provided its rationale and decision that Graham's August 1, 2016 Pennsylvania drug dealing conviction was also a violent felony. (A-137-140). The Superior Court also determined there was no *Erlinger* issue because the question of whether Graham's Pennsylvania conviction is a violent felony is a legal question and there are no factual questions to be resolved. (A-140). The Superior Court further determined that, were Graham's sentencing subject to *Erlinger*, Graham had waived his right for the issue to be determined by a jury. (A-140).

The Superior Court heard from the parties as to sentencing, including Graham's allocution. (A-141-46). The Superior Court sentenced Graham to serve the 10-year minimum mandatory sentence. (A-147)

Graham has appealed. This is the State's Answering Brief.

SUMMARY OF ARGUMENT

I. DENIED. Graham’s claim has no merit because this Court previously determined that a conviction for Pennsylvania Consolidated Statutes Chapter 35, Section 780-113(a)(30) involving marijuana is equivalent to former 16 *Del. C.* § 4754(1). Former 16 *Del. C.* § 4754(1) is listed as a “violent felony” in section 4201. Because Graham admits one of his Pennsylvania convictions, for robbery, is a violent felony, and his Pennsylvania conviction for drug dealing in marijuana is a violent felony, section 1448(e)(3) applies, and Graham was correctly sentenced to a 10-year minimum mandatory sentence at Level V, pursuant to section 1448(e)(3). The 2023 enactment of the Delaware Marijuana Control Act has no impact on the analysis of Graham’s 2016 Pennsylvania conviction.

II. DENIED. Graham waived any *Erlinger*¹-based claim when he agreed that the Superior Court judge determine the appropriate sentence. *Erlinger* does not apply to determining whether a conviction in another jurisdiction is equivalent to a Delaware “violent felony,” which is a legal question, not a factual question. The sentencing court may consider *Shepard* documents in making the determination, the use of those documents does not render the decision a factual question.

¹ *Erlinger v. United States*, 602 U.S. 821 (2024).

STATEMENT OF FACTS²

On August 19, 2024, at about 7 p.m., officers with the Wilmington Police Department were on duty in the City of Wilmington, and observed a vehicle with registration plates associated with a wanted person, Dametris Graham (“Graham”).³ Graham was wanted for violations of probation in Pennsylvania as well as pending robbery charges in Delaware. The officers observed Graham exit a nearby home and enter the vehicle several times.

The Wilmington officers contacted the Governor’s Task Force with this information. Once the Task Force officers arrived, they could not locate Graham, who had entered another home on the same street. The Task Force officers left. Later that evening, the Wilmington officers saw Graham enter and exit the car several times, and coordinated a pedestrian stop. Patrol units conducted a pedestrian stop of Graham and took him into custody.

At the request of the Chief Investigating Officer for Graham’s robbery charge, officers returned to the car to seize the Pennsylvania registration plates from the car, which were registered to Graham. When an officer approached the vehicle, he saw a handgun in plain view inside the car, as well as ammunition in the handgun. The

² These facts are taken from the initial police report. (B-1-3).

³ The registration plates were associated with a different vehicle registered to Graham. Officers later determined that the vehicle they observed had been reported stolen in North Carolina.

officers determined that the vehicle's VIN was not registered. Officers had the vehicle towed.

The officers obtained a search warrant on the vehicle and seized a firearm and 9 rounds of 9mm ammunition contained within the firearm.

I. THE SUPERIOR COURT CORRECTLY FOUND THAT GRAHAM’S 2016 PENNSYLVANIA CONVICTION FOR DRUG DEALING IN MARIJUANA IS EQUIVALENT TO A DELAWARE VIOLENT FELONY FOR PURPOSES OF SENTENCING FOR GRAHAM’S CURRENT CONVICTION FOR POSSESSION OF A FIREARM BY A PERSON PROHIBITED.

Questions Presented

Whether this Court’s prior decisions comparing the same Pennsylvania and Delaware statutes should be followed. Whether the passage of the 2023 Delaware Marijuana Control Act impacts the interpretation of a 2016 drug conviction.

Scope and Standards of Review

“‘Whether a prior conviction constitutes a predicate violent felony . . . is a question of law, which this Court reviews de novo.’ [This Court] also ‘review[s] statutory construction issues de novo to determine if the Superior Court erred as a matter of law in formulating or applying legal precepts.’”⁴

Argument

Graham pled guilty to Possession of a Firearm by Person Prohibited, and concedes that one of his two prior Pennsylvania convictions, for a 2022 robbery conviction, is a “violent felony” for purposes of the enhanced penalty provisions in 11 *Del. C.* § 1448.⁵ At issue here is whether Graham’s 2016 Pennsylvania conviction

⁴ *Rembert v. State*, 2025 WL 1805214, at *1 (Del. July 1, 2025).

⁵ 11 *Del. C.* § 1448(e)(1).

for Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver marijuana, Pennsylvania Consolidated Statutes, Chapter 35, section 780-113(a)(30), is analogous to Delaware’s statute barring the same conduct found in former 16 *Del. C.* § 4754(1), Drug Dealing—Aggravated possession. Graham argues they are not equivalent, after passage of Delaware’s 2023 Marijuana Control Act. The Superior Court correctly rejected Graham’s arguments and followed this Court’s decision in *Valentine v. State*.⁶

A. Graham’s Pennsylvania conviction is “the same as or equivalent to” former 16 *Del. C.* § 4754(1), a “violent felony” for purposes of enhanced sentencing pursuant to 11 *Del. C.* § 1448(e)(1).

Graham pled guilty to Possession of a Firearm by a Person Prohibited, 11 *Del. C.* § 1448, for knowingly possessing a firearm after having been convicted of robbery in Pennsylvania in 2022.⁷ Indictment. (A-5). The relevant sentencing provision in section 1448(e)(1) states:

[A]ny person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm . . . while so prohibited shall receive a minimum sentence of:

- a. Three years at Level V, if the person has previously been convicted of a violent felony;
- b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony . . . ;or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.⁸

⁶ *Valentine v. State*, 2019 WL 1178765 (Del. Mar. 12, 2019).

⁷ 11 *Del. C.* § 1448(a)(1).

⁸ 11 *Del. C.* § 1448(e)(1).

“For the purposes of this subsection, “violent felony” means any felony so designated by § 4201(c) of [Title 11], or any offense set forth under the laws of . . . any other state . . . which is the same or equivalent to any of the offenses designated” in section 4201(c).⁹ “But statutes need not be identical for [the Court] to find that a defendant committed an offense that is ‘the same as or equivalent to’ an offense specified under Delaware law.”¹⁰ “[I]n addition to statutory definitions, a sentencing court may look ‘to a limited class of documents (for example, the indictment, jury instructions, or plea agreement and colloquy) to determine what crime, with what elements, a defendant was convicted of.’”¹¹

On August 1, 2016, Graham pled guilty in Pennsylvania to Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver a controlled substance, marijuana. (A-86, 89-90, 93-95). The statute is found at Chapter 35, section 780-113(a)(30) of the Pennsylvania Consolidated Statutes, which states:

Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.¹²

⁹ 11 *Del. C.* §1448(e)(3).

¹⁰ *Valentine*, 2019 WL 1178765, at *2

¹¹ *Id.* “These documents are called *Shepard* documents after *Shepard v. United States*.” *Id.* (citing 544 U.S. 13 (2005)).

¹² 35 Pa. Cons. Stat. § 780-113(a)(30). The current version of this statute has been

Former Delaware Code section 4754(1) of title 16, “Drug Dealing—Aggravated possession; Class D Felony” states, “Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance.”¹³

In *Valentine v. State*, this Court considered the equivalence of the same Pennsylvania and Delaware crimes.¹⁴ The State alleged Valentine was eligible for enhanced sentencing in Section 1448(e)(3) for two prior Pennsylvania convictions, including the marijuana-related violation of Chapter 35, section 780-113(a)(30).¹⁵ The Court found that that the Pennsylvania statute was broader than, and not equivalent to 16 *Del. C.* § 4754(1), because it also addressed counterfeit substances, which Delaware addresses separately in section 4758.¹⁶ The Court, however, found that the “statutes need not be identical,” and that a sentencing court can rely on *Shepard* documents to determine the specific crime and elements the defendant committed.¹⁷ The Court determined:

in effect since April 7, 2014.

¹³ 16 *Del. C.* § 4754(1)(2011-2019); see *Valentine v. State*, 2019 WL 1178765, at *2; *Rembert v. State*, 2025 WL 1805214, at *1-2 (analyzing Rembert’s 2014 and 2017 felony drug convictions pursuant to 16 *Del. C.* § 4754(1)).

¹⁴ *Valentine v. State*, 2019 WL 1178765, at *1-2.

¹⁵ *Id.* at *1.

¹⁶ *Id.*

¹⁷ *Id.* at *2.

With respect to Valentine's conviction under 35 PA. CONS. STAT. § 780-113(30), the jury verdict sheet, a *Shepard* document, indicated that he was convicted of possession with intent to distribute of marijuana specifically. Consequently, this offense is the 'same as or equivalent to' a Delaware violent felony.¹⁸

Here, Graham's conviction was also for marijuana, not a counterfeit substance. This Court's holding in *Valentine* controls, and Graham's conviction of the Pennsylvania statute is the same or equivalent to former 16 *Del. C.* § 4754(1), a violent felony.

This Court's decisions in *Rembert v. State*¹⁹ and *Butcher v. State*²⁰ confirm that the statutes (both the prior conviction and the application of PFBPP) are analyzed with respect to when each was committed. In *Rembert*, this Court considered Rembert's 2014 and 2017 Delaware convictions for drug dealing pursuant to 16 *Del. C.* § 4574(1), which was since replaced by § 4754(a). The *Rembert* Court, citing *Butcher*, found "that 'convictions that are properly used as predicates for an enhanced sentence must . . . be for the specific crimes current listed in' the code section listing violent felonies, meaning at the time of the offense."²¹ Rembert committed PFBPP at the time that "[Former] Section 4754(1)" was listed as a "violent felony" in section 4201(c), but the then-current equivalent statute,

¹⁸ *Valentine v. State*, 2019 WL 1178765, at *2.

¹⁹ *Rembert*, 2025 WL 1805214.

²⁰ *Butcher v. State*, 171 A.3d 537 (Del. 2017).

²¹ *Rembert*, 2025 WL 1805214, at *2 (quoting *Butcher*, 171 A.3d at 541) (additional citations omitted).

Section 4754(a), was not listed.²² The Court applied the list of “violent felonies” as of the time Rembert committed PFBPP, and found his two convictions pursuant to former Section 4754(1) were violent felonies for purposes of the enhanced sentencing in Section 1448(e)(1).²³

By contrast, in *Butcher*, the defendant’s prior conviction had been removed from the list of “violent felonies” when he committed PFBPP.²⁴ Butcher had been convicted of Possession of a Controlled Substance within 300 Feet of a Park in 2010.²⁵ By the time he committed PFBPP and was sentenced, in 2016, the legislature had removed his prior conviction from the list of “violent felonies” in Section 4201(c).²⁶ As a result, this Court determined the prior conviction was not a violent felony for purposes of enhancing his PFBPP sentence.²⁷ Unlike Butcher, Graham’s

²² *Rembert*, 2025 WL 1805214, at *2 and n.12 (noting “that the drug dealing statute was amended in 2019 to change the subsection designations” from numbers to letters, so that “Section 4754(1) of the drug dealing statute was redesignated as Section 4754(a)-(b) on December 15, 2019” and “On September 21, 2023, the legislature added “[Former]” before “Section 4754(1) under Section 4201(c) and “did not list Section 4754(a) as a violent felony.”)

²³ *Id.*, at *2.

²⁴ *Butcher*, 171 A.3d at 539.

²⁵ *Id.* at 538.

²⁶ *Id.*

²⁷ *Butcher*, 171 A.3d at 543 (“Based upon the unambiguous language of Sections 1448(e) and 4201(c), we conclude that the definition of ‘violent felony’ as that term is used in Section 1448(e) is controlled by the version of Section 4201(c) in effect at the time Butcher committed Person Prohibited.”).

prior conviction remains a “violent felony” under section 4201(c), and qualifies him for the enhanced sentencing in section 1448(e).

Pursuant to *Valentine*, *Rembert* and *Butcher*, Graham’s Pennsylvania 2016 conviction is equivalent to a 2016 Delaware conviction for violation of section 4754(1), and is designated as a violent felony in current section 4201(c) as “Former 4754(1)” for purposes of enhanced sentencing under section 1448(e)(1). The Superior Court correctly sentenced Graham to the 10-year minimum mandatory sentence required for two prior separate violent felony convictions, in Section 1448(e)(1)c.

B. Passage of the Delaware Marijuana Control Act of 2023 has no effect on the interpretation of the Pennsylvania and Delaware statutes or Graham’s conviction of a violent felony.

Graham contends that his prior conviction of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver marijuana should not be considered a violent felony due to the enactment of the “Delaware Marijuana Control Act in 2023 (“MCA”), which, he contends altered the concept of “delivery” of marijuana “in a substantial and deliberate manner.” Op. Br. at 8. While enactment of the MCA permits the possession of a certain amount of “personal use” marijuana and allows for “adult sharing,” it does not have the impact Graham asserts.

Further, even if the MCA did fundamentally alter the definition of delivery of marijuana or legalize all adult sharing of marijuana, it would not apply to Graham’s

2016 offense. Graham’s argument requires the misapplication of the precedent addressed in Section A above. Rather than comparing the 2016 Pennsylvania statute for which he was convicted to the equivalent 2016 Delaware statute, Graham improperly compares his 2016 Pennsylvania drug dealing conviction with the Delaware statute post-MCA.

In addition to contradicting applicable precedent, Graham’s argument contradicts Delaware’s saving statute, 11 *Del. C.* § 211. In *Butcher*, this Court explained that, pursuant to the savings statute, the State may “prosecute crimes under a repealed criminal statute when the crimes were committed before the statute’s repeal” and that a defendant does not benefit from an amended statute where his conduct preceded the amendment.²⁸ The *Butcher* Court reflected on *Watson v. State*,²⁹ interpreting 11 *Del. C.* § 4215A, where the Court found that an amendment to the statute prohibiting trafficking in cocaine reduced that crime to a misdemeanor for amounts under 10 grams.³⁰ The Court determined that Watson’s conviction, for an amount less than 10 grams, remained a felony despite the amendment, noting “[s]ound policy reasons militate against such *post hoc* challenges to convictions

²⁸ *Butcher*, 171 A.3d at 542-43, n.32 (quoting 11 *Del. C.* § 211 and *Lewis v. State*, 144 A.3d 1109, 1111 (Del. 2016) and citing *Dahms v. State*, 2004 WL 1874650, at *1 (Del. 2004)).

²⁹ *Watson v. State*, 892 A.2d 366 (Del. 2005).

³⁰ *Butcher*, 171 A.3d at 544, n.34 (citing *Watson*, 892 A.2d at 369 and 11 *Del. C.* § 4214(b)).

where elements defining the predicate offence may have changed,” unlike *Butcher*, where only the “classification of the specifically denominated crime and not its elements” changed.³¹ Comparing Graham’s 2016 conviction to the current analogous crime would contradict the savings statute and *Butcher/Watson*.

Finally, even if the Court were to consider the changes to Graham’s Delaware-equivalent statute, section 4754(1)(2016), his argument would fail because he misstates, or overstates, the changes contained in the Marijuana Control Act. Graham argues that after the MCA “marijuana given or shared with another ceased to be a crime at all, much less a violent felony.” This is incorrect. The MCA does not invalidate the application of 16 *Del. C.* § 4754 to marijuana. It remains unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance.”³² And marijuana remains a schedule I controlled substance under 16 *Del. C.* § 4714.³³ Section 4764A(c) of the Marijuana Control Act specifically states, that it remains unlawful to engage in “[g]rowing, manufacturing, selling, or cultivating marijuana without a license granted under Chapter 49A of this title or other provision of Delaware law, as defined and punished

³¹ *Id.*

³² 16 *Del. C.* § 4754.

³³ 16 *Del. C.* § 4714.

under this chapter.”³⁴

Graham contends that section 4750 of Title 16 “direct[s] that ‘[t]he offenses and penalties provided for in this chapter do not apply to marijuana-related conduct.’” Op Br. at 6, 9. Graham omits a significant caveat—section 4750, in full, states, “The offenses and penalties provided for in this chapter do not apply to marijuana-related conduct *allowed under the Delaware Medical Marijuana Act, Chapter 49A of [Title 16] or the Delaware Marijuana Control Act, Chapter 13 of Title 4.*”³⁵ The Act does not permit the free flow of gifted marijuana as Graham describes. Both the MCA and the Delaware Medical Marijuana Control Act (“MMCA”) contain limits on quantities for personal use, possession limits for medical marijuana, and limits on “adult sharing.” The MCA defines:

(24) “Personal use quantity” to be “as defined in § 4701 of Title 16;” and (25) “Possession limit” as “the amount of marijuana that may legally be possessed at any 1 time by an individual 21 years of age or older who is not a registered qualifying patient or registered designated caregiver under [the MMCA,] Chapter 49A of Title 16.”³⁶

Section 4701 of Title 16 states:

“Personal use quantity” means 1 ounce or less of marijuana in the form of leaf marijuana, 12 grams or less of concentrated cannabis, or cannabis products containing 750 milligrams or less of delta-9-

³⁴ 16 Del. C. § 4764A(c)

³⁵ 16 Del. C. § 4750 (emphasis added).

³⁶ 4 Del. C. § 1302(24) and (25) (defining terms). Section 4903A(a) and (b) of the MMCA allow patients and caregivers to possess up to “6 ounces of usable marijuana.” 16 Del. C. § 4903A(a) and (b).

tetrahydrocannabinol. “Leaf marijuana” means the dried leaves and flowering tops of the plant *cannabis sativa* L.³⁷

Section 4764A defines “Legal marijuana-related activity,” and provides that certain forms of “adult sharing” of marijuana without payment are legal, but limits legal “adult sharing” and other lawful activities to the “personal use quantity.”³⁸ Section 4764A also states, “Growing, manufacturing, selling or cultivating marijuana without a license” is unlawful.³⁹ Section 4764 outlines: (a) that possessing more than the personal use quantity is an unclassified misdemeanor; (b) fines assessed for any person under age 21 possessing or using a personal use quantity; and (c) that even possessing a personal use quantity is unlawful if it is possessed in a moving vehicle or in public.⁴⁰ Simple possession of marijuana is a Class G felony when a person possesses 175 or more grams.⁴¹

Graham argues that the Pennsylvania statute addresses activity that is broader than the Delaware Statute because the Pennsylvania statute continues to criminalize “adult sharing” of marijuana. The Pennsylvania statute does prohibit this, but the

³⁷ 16 *Del. C.* § 4701(36).

³⁸ 16 *Del. C.* § 4764A(b)(1) (“Notwithstanding any other provision of this chapter, no civil or criminal penalty may be imposed . . . for any of the following activities by an individual 21 years of age or older . . . (1) Adult sharing of a personal use quantity or less of marijuana.”).

³⁹ 16 *Del. C.* § 4764A(c)(2).

⁴⁰ 16 *Del. C.* § 4764.

⁴¹ 16 *Del. C.* § 4763.

difference between the Delaware and Pennsylvania statutes does not support Graham's theory. Chapter 35, section 780-113(a)(31) prohibits:

Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale.

For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.⁴²

Although these activities are illegal, Pennsylvania's thirty gram personal use quantity of marijuana is significantly higher than Delaware's one gram. Further, the Pennsylvania statute states that violations of section 780-113(a)(31) are misdemeanors punishable by up to 30 days in prison and/or a fine up to \$500.⁴³ As such, they are equivalent to Delaware's class B misdemeanors.

C. The *Shepard* documents are sufficient.

Graham claims that the *Shepard* documents are insufficient to establish equivalence between the Delaware and Pennsylvania statutes. His argument fails because Pennsylvania law is less restrictive than Delaware's for personal use and adult sharing. As discussed above, Pennsylvania's personal use quantity is 60 grams, and possessing less than 60 grams is a misdemeanor. Delaware's personal

⁴² 35 Pa. Cons. Stat. § 780-113(a)(31).

⁴³ 35 Pa. Cons. Stat. § 780-113(g).

use quantity is 1 gram. For Graham to have been convicted in Pennsylvania for “adult sharing” or personal use activity that was legal in Delaware, he would have had to possess less than one gram of marijuana, which would have been categorized as a misdemeanor pursuant to § 780-113(g), not a felony. According to the *Shepard* documents, Graham’s Pennsylvania conviction is a felony. Section 780-113(f) outlines the penalties for violation of section 780-113(a)(30), all of which are felonies.⁴⁴ Graham’s *Shepard* documents reflecting his felony conviction, therefore, rule out this possibility. This claim has no merit.

⁴⁴ Chapter 35, section 780-104(1)(iv) designates “marijuana” as a Schedule I substance in Pennsylvania.

II. GRAHAM WAIVED ANY CLAIM UNDER ERLINGER THAT A JURY MUST DETERMINE WHETHER ENHANCED SENTENCING APPLIES. THE SHEPARD DOCUMENTS SUPPLIED SUFFICIENT INFORMATION FOR THE SUPERIOR COURT TO DETERMINE THAT GRAHAM’S PENNSYLVANIA CONVICTION IS EQUIVALENT TO FORMER 16 DEL. C. § 4754(1).

Question Presented

Whether the *Shepard’s* documents below were sufficient to determine the legal question that Graham’s Pennsylvania conviction was equivalent to the Delaware violent felony, former 16 *Del. C.* § 4754(1), for purposes of enhanced sentencing for PFBPP pursuant to 11 *Del. C.* § 1448(e)(3) where this Court has already found the two crimes to be equivalent when the Pennsylvania crime involves marijuana.

Scope and Standards of Review

“Whether a prior conviction constitutes a predicate violent felony . . . is a question of law, which this Court reviews de novo.’ [This Court] also ‘review[s] statutory construction issues de novo to determine if the Superior Court erred as a matter of law in formulating or applying legal precepts.’” This Court is not required to rule on questions that were affirmatively waived in the trial court.⁴⁵

⁴⁵ *King v. State*, 239 A.2d 707, 708 (Del. 1968) (finding the express and effective waiver below was “far more . . . than the mere absence of an objection” and the Court is “not required to rule on the question); see *Wright v. State*, 980 A.2d 1020, 1023 (Del. 2009) (“Although there have only been a few cases, this court has consistently held that a conscious decision to refrain from objecting at trial as a

Argument

Graham claims that he “does not now challenge that portion of the Superior Court’s decision on appeal where the Judge ruled that he had ‘waived his right for the issue to be determined by a jury.’” Graham does, however, attempt to reframe the waived *Erlinger*⁴⁶ issue by asserting that the Superior Court erred in finding this was a legal, not factual question, which the Superior Court failed to find beyond a reasonable doubt, and asserting that the State failed to provide any evidence that “Graham had engaged in still-prohibited conduct under Delaware Law rather than the alternative sharing conduct no decriminalized in Delaware but still a crime in Pennsylvania.” Op. Br. at 18.

Graham’s claims fail for multiple reasons. First, Graham affirmatively waived his right to a trial by jury and any *Erlinger* issue below by expressly consenting to the Superior Court’s determination of the issue. The Court need not revisit whether *Erlinger* applies.

Second, the *Shepard* documents provided to the Superior Court provide all required information for the court to have made its decision because for the reasons addressed in Argument I, including: (1) this Court previously decided the two statutes are equivalent where the substance in question is marijuana, in *Valentine v.*

tactical matter is a waiver that will negate plain error appellate review.”).

⁴⁶ 602 U.S. 821 (2024).

State,⁴⁷ (2) the 2023 Marijuana Control Act has no impact on the analysis of the elements of a 2016 Pennsylvania conviction, or whether that conviction is equivalent to former Section 4754(1), a Delaware violent felony; (3) if the MCA were applied, it does not have the impact Graham claims because the relief under Delaware law is limited to personal use quantities of marijuana and quantities permitted for patients and facilities utilizing or distributing medical marijuana as permitted by the MMCA; and (4) Graham could not have been convicted of felony drug dealing in Pennsylvania while engaged in activity legal in Delaware, because legal activity in Delaware (outside the MMCA) is less than 1 gram, and Pennsylvania considers personal use quantities up to 60 grams a misdemeanor.

Further, Graham admitted below, at his plea colloquy and counsel's memorandum, that he was convicted in Pennsylvania in 2016 of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver. Whether or not this conviction is analogous with former Section 4201(c) is a question of law properly left to the court to decide.

Graham's claims have no merit. This Court can affirm the "Superior Court's judgement on . . . independent and alternative grounds."⁴⁸

⁴⁷ 2019 WL 1178765.

⁴⁸ *Anderson v. State*, 2018 WL 1341714, at *1 (Del. March 14, 2018) (citing *Unitrin, Inc. v. American Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) for the proposition that this Court "may affirm a trial court's judgment for reasons

CONCLUSION

The judgment of the Superior Court should be affirmed.

/s/ Abby Adams

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DATE: July 14, 2025

different than those articulated by the trial court.”).

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEMETRIS GRAHAM,	)	
Defendant Below-	)	No. 117, 2026
Appellant,	)	
	)	On Appeal from the
v.	)	Superior Court of the
	)	State of Delaware
STATE OF DELAWARE,	)	
Plaintiff Below-	)	
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 Microsoft Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 4,566 words, which were counted by Microsoft Word.

DATE: July 14, 2026

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