



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

APPELLANT'S REPLY BRIEF

Robert M. Goff, Esquire (#2701)
Office of the Public Defender
Carvel State Building
820 N. French St.
Wilmington, Delaware 19801
(302) 577-5151

Attorney for Appellant

DATE: August 28, 2026

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I. CONTRARY TO THE STATE’S CLAIM, DELAWARE’S CRIMINAL SAVINGS STATUTE DOES NOT APPLY TO 11 *DEL. C.* § 4201(c) OR ENHANCING VIOLENT FELONIES UNDER 11 *DEL. C.* 1448(e)(3) FOR THE PURPOSES OF SENTENCING A DEFENDANT FOR POSSESSION OF A FIREARM BY A PERSON PROHIBITED.

Merits of Argument

The State argues that the Delaware Marijuana Control Act’s (the MCA’s) decriminalization of adult shared marijuana is irrelevant to the legal impact of his 2016 Pennsylvania drug conviction because Delaware’s saving statute, 11 *Del. C.* § 211, allows prosecution of crimes under a repealed criminal statute when the crimes were committed before the statute’s repeal and a defendant does not benefit from amended statute where his conduct preceded the amendment.¹ In the context of a crime defined as a violent felony under 11 *Del. C.* § 4201(c) used to enhance a sentence for Possession of a Firearm by a Person Prohibited (PFBPP), this Court has ruled exactly the opposite, holding that the prior violent felony conduct must still be such at the time the current PFBPP offense was committed.² Why it would be any different for an out-of-state offense alleged to be analogous to a Delaware violent felony is not addressed by the State.

¹ Ans. Brief at 13.

² *Butcher v. State*, 171 A.3d 537 (Del. 2017), adopting the persuasive reasoning of *State v. Edgar*, 2016 WL 6195980 (Del. Super. Ct. Oct. 21, 2016).

II. THE STATE’S ARGUMENT RELIES ON ITS MISTAKEN CLAIM THAT DELAWARE’S PERSONAL USE DECRIMINLIZATION OF DELIVERY FOR ADULT SHARED MARIJUANA IS LIMITED TO 1 GRAM OR LESS OF MARIJUANA. THE DELAWARE MARIJUANA CONTROL ACT, IN FACT, DECRIMINALIZED UNCOMPENSATED MARIJUANA DELIVERY OF UP TO 1 FULL OUNCE OF MARIJUANA.

Merits of Argument

The State argues that 16 *Del. C.* § 4750’s command that the “offenses and penalties provided for in this chapter do not apply to marijuana-related conduct” does not permit the free flow of gifted marijuana as Graham describes” under the rubric of “adult sharing” because Pennsylvania’s misdemeanor “thirty gram personal use quantity of marijuana is significantly higher than Delaware’s one gram.”³ The State, however, is mistaken. In fact, the MCA references 16 *Del. C.* § 4701 to define “personal use quantity”⁴ as “*1 ounce or less* of marijuana in the form of leaf marijuana,” not, as the State erroneously claims, “one gram.”⁵ The conversion of an ounce of marijuana leaf to grams comes out to 28.3495231⁶ grams. As such, contrary to the State’s argument, passage of the MCA does decriminalize the “free

³ Ans. Br. at 15-17.

⁴ 4 *Del. C.* § 1302(24)

⁵ Ans. Br. at 17.

⁶ This figure is the result of undersigned counsel’s Bing search on August 24, 2026, using the following prompt: “1 ounce equals how many grams.”

flow of gifted marijuana” in the context of “adult sharing” in Delaware so long as its amount is no greater than 1 ounce or 28.3 grams.

III. THE PAPERS SUBMITTED BY THE STATE DID NOT PROVE BEYOND A REASONABLE DOUBT THAT GRAHAM HAD ENGAGED IN CONDUCT CONSTITUTING A VIOLENT FELONY UNDER CURRENT DELAWARE LAW.

Merits of Argument

The State also makes the argument that because 30 grams or less of marijuana leaf which is not sold for profit is charged as a misdemeanor in Pennsylvania and not a violent felony, the State established that Graham's 2016 conviction was not a violent felony under Delaware law at the time of his commission of PFBPP.⁷ However, this argument ignores and fails to address the factual insufficiency of the State's *Shepard*⁸ documents to establish that the 2016 Pennsylvania convictions would constitute a violent felony under post-MCA Delaware law.⁹ That is, the papers do not contain facts that establish a Graham's delivery of marijuana for sale (as opposed to as a gift) or that delivered marijuana was of a weight criminalizing that conduct in Delaware (being over 1 ounce 28.3 grams.¹⁰ Where, as here, the prior conviction is divisible between conduct that would violate Delaware's drug delivery statute and conduct that would not, the Trial Court was required to determine whether the *Shepard* documents supplied by the State established beyond

⁷ Ans. Br. at 17.

⁸ See *Shepard v. United States*, 544 U.S. 13 (2005).

⁹ A85-100.

¹⁰ *Id.*

a reasonable doubt that Graham's Pennsylvania conduct would, as of the time of his commission of PFBPP, have been a violent felony under Delaware law.¹¹

In this case, Graham admitted to only 1 of his prior felonies would be violent under Delaware law, not two.¹² Whether characterized as a question of fact or law, the *Shepard* documents in this case did not perform the necessary task of establishing the fact that the second felony was a violent one under Delaware law. As such, the State did not prove that Graham's Pennsylvania drug conviction constituted a conviction for a crime analogous to a violent felony under Delaware law.

¹¹ See Op. Br. 14-18; Cf. *Daniels v. State*, 246 A.3d 557, 562-563 (Del. 2021).

¹² A16-17, 38.

CONCLUSION

For the reasons and authorities cited in Appellant's Reply and Opening Briefs, Graham's sentence should be vacated and the case remanded for resentencing.

Respectfully submitted,

/s/ Robert M. Goff
Robert M. Goff (#2701)
Office of Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION

1. The accompanying Reply 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. The accompanying Reply Brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 840 words, which were counted by Microsoft Word.

Dated: August 28, 2026.

/s/ Robert M. Goff
Robert M. Goff (#2701)
Office of Public Defender
Carvel State Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5151