THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	Case No.: 2505014750
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Y------ A----,	)	
	)	
Respondent.	)	

ORDER ON MOTION TO SUPPRESS

Before the Court is a Motion to Suppress filed by 16-year-old Y------ A---- (D.O.B. --/--/2008) ("Y------") on September 10, 2025. Y------ contends that police stopped him without consent or reasonable suspicion and that, as a result, the State should not be able to introduce evidence of ammunition taken from his pocket in a subsequent search. On September 24, 2025, the State filed its response, arguing that reasonable suspicion had arisen by the time an initial "consensual encounter" between Y------ and the police evolved into a constitutional seizure. The Court held a suppression hearing on November 17, 2025, and heard testimony from Detective G------ M-------- of the Wilmington Police Department and Special Police Officer J----- S-----, a state probation officer. Upon careful consideration of the evidence and arguments presented, the Court now **GRANTS** Y------'s Motion to Suppress.

FACTS

On May 29, 2025, shortly after 5:30 p.m., Y------ was walking with a companion along the edge of William Judy Johnson Memorial Park, heading north on Dupont Street on the westside of Wilmington. The sun was still high in the sky; many adults and children were

outside in the neighborhood. Y------ wore a zipped-up, gray jacket and black joggers, and his companion wore a brown jacket and a surgical face mask. When they spotted a Dodge Durango traveling south toward them on Dupont Street, Y------ and his companion turned left onto Conrad St.

Inside the car were three law enforcement officers in modified black uniforms labeled "probation" or "police" on the front and back.[1] Detective M-------- ("Det. M--------") was driving, accompanied by Special Police Officers ("SPO") S----- and C------ from probation. Although the car was unmarked, it was equipped with emergency lights and sirens. SPO S------ sat in the front passenger seat, and SPO C------ rode in the back behind Det. M--------.[2]

The officers were on patrol around the 200 block of Dupont for the Safe Streets program, a partnership between Wilmington Police Department and the Department of Corrections. As part of their work with Safe Streets, the officers "saturate that area daily" because, SPO S----- testified, it is a "high-crime area."[3] The goal is to make community contact with probationers—emphasizing compliance with sanctions and conditions, home visits, and administrative searches—and, when, as SPO S----- noted, there is no "probation stuff to do," to proactively patrol the area with regular police officers to look for and respond

[1] Suppression Hr'g at 9:19 a.m., Nov. 17, 2025 (audio) (testimony of SPO S-----).
[2] At the suppression hearing, Det. M-------- testified that he drove while Officer C------ was in the front and SPO S----- was in the back. SPO S-----, in contrast, testified that he was in the front passenger seat. Based on a review of the body-worn camera footage submitted in evidence, the Court concludes that Det. M--------'s recollection was faulty.
[3] SPO S----- conceded on cross-examination that the area, to his knowledge, has never been officially designated a high-crime area by the Wilmington Police Department. He based his characterization on his professional experience but testified "no one's ever come to [him] and physically told [him] it's a high-crime area." Suppression Hr'g at 9:42 a.m. (testimony of SPO S-----).

to criminal activity.[4] Because of their frequent activity in the area, these officers and their unmarked Dodge Durango are visible and well-recognized in the community. They regularly stop people and search them "with reason . . . not just randomly."[5]

Because Y------ was not on probation and was not wanted, when the officers elected to approach him, it was part of their proactive-patrol duties. SPO S----- testified that he noticed Y------ and his companion spot the Durango and then turn "abruptly" away and to the left to walk up Conrad Street.[6] When the officers reached the intersection of Dupont and Conrad, they looked around the corner to see Y------ and his companion walking quickly away from them on Conrad and periodically peering back over their shoulders to keep an eye on the car. SPO S----- also noticed that Y------ had a "mildly heavy jacket pocket" on his left side.[7] He acknowledged, however, that the object could have been "anything."[8] He had never seen Y------ before, could not identify his precise age, and did not know whether he was on probation, but his suspicion was aroused by the combination of the heavy object and the attempt to avoid the police.[9]

On that basis, the officers turned onto Conrad Street to pursue Y------ and his companion. Conrad is a one-way street going east. Following Y------ and his companion as they walked west, the officers drove after them the wrong way down the street. Det. M------

---

[4] Suppression Hr'g at 10:10–12 a.m. (testimony of SPO S-----).
[5] *Id.* at 9:40 a.m.
[6] *Id.* at 9:21 a.m.
[7] *Id.* at 9:22 a.m.
[8] *Id.* at 10:07 a.m.
[9] *Id.* at 10:08 a.m.

-- explained that doing so is fairly routine while on patrol in "high-crime areas."[10] Moments later, Y------ and his companion parted ways. The three officers remained focused on Y------, and his companion was never pursued.

Notwithstanding SPO S-----'s testimony that the officers intended only to watch Y------, they soon pulled alongside him and continued driving slowly in the wrong direction to keep pace as he walked on the sidewalk.[11] Without pausing to turn on his body-worn camera, Det. M-------- rolled down the driver's window to engage Y------, whom he observed to be a "younger male" between 15 and 20 years old.[12] After a brief interaction, Y------ "bolt[ed] off very, very quick."[13] Unfortunately, since the officers failed to press record on their body worn cameras from the moment they first engaged Y------ or consistently testify about their interaction with him, it is not entirely clear how long the officers watched Y------ or what prompted him to run.[14]

During the encounter, Det. M-------- asked Y------ either (a) what he was doing in the area (according to Det. M--------) or (b) whether he was carrying any guns (according to SPO

---

[10] *Id.* at 10:31 a.m. (testimony of Det. M--------).
[11] *Id.* at 9:47 a.m. (testimony of SPO S-----).
[12] *Id.* at 10:30 a.m. (testimony of Det. M--------).
[13] *Id.* at 9:23 a.m. (testimony of SPO S-----).
[14] The officers were all wearing body-worn cameras, but none of them captured audio or substantial video of this portion of the encounter. Body-worn cameras are always recording video, even when inactive, but that video is only retained for a short period unless the officer presses a button to activate the camera. When that button is pressed, the camera begins to capture and store both video and audio, and it also retains a minute or two of silent video preceding the moment of activation. Here, the State was able to present only silent video of this important initial interaction—silent video focused primarily on the car's interior, since the officers were still seated inside and facing forward. Although no party entered that policy in evidence, it has been officially published by the city of Wilmington, and the Court may take judicial notice of it. *See* D.R.E. 201(b)(2). Officers are expected to activate their body-worn cameras "prior to exercising official police powers or when they believe the likelihood is great that they will need to exercise their official police powers." Body-Worn Cameras, Wilmington Police Dep't Directive No. 693 (April 27, 2021), https://www.wilmingtonde.gov/home/showpublisheddocument/10027/637551938413670000.

S-----).[15] Y------ approached the police cruiser, spread his arms open, and denied having a gun.[16] SPO S----- testified that Y------ then said, "check me if you want," which he understood as consent for the police to immediately get out of the car and search him.[17] But Det. M-------- provided a different account:

> ***Defense Attorney:*** *Y------ told you he didn't have anything on him, correct?*
>
> ***M--------:*** *Yes, I think he said [I] don't have anything. You can check me if you want.*
>
> ***Defense Attorney:*** *And then you asked him to lift up his shirt, is that correct?*
>
> ***M--------:*** *I could have. I don't remember my exact words. I don't remember if he willingly lifted it at some point.*[18]

Given Det. M--------'s uncertain testimony, the Court finds that he asked Y------ to lift his shirt to confirm the absence of weapons in his waistband and that Y------ complied.[19] Moments later, when Det. M-------- and SPO S-------—simultaneously and without warning—opened their doors to conduct a more thorough search, Y------ fled.[20]

Y------ ran north through a parking lot. The officers closed their doors and activated their lights, sirens, and body-worn cameras, and Det. M-------- hit the gas to chase Y------. One of the officers got on the radio to call for backup, but none of them indicated on the radio or to each other that Y------ might have a gun.[21] Had Y------ simply declined to talk and

---

[15] Suppression Hr'g at 10:18–19 a.m. (testimony of Det. M--------); *id.* at 9:23 a.m. (testimony of SPO S-----).
[16] Det. M--------, despite sitting in the driver's seat and being closest to Y------, could not recall this detail. But the limited body-worn camera footage available appears to confirm that Y------ did in fact take a few steps toward the police car.
[17] Suppression Hr'g at 9:23 a.m. (testimony of SPO S-----).
[18] *Id.* at 10:25 a.m. (testimony of Det. M--------).
[19] *Id.* at 9:23 a.m. (testimony of SPO S-----).
[20] Suppression Hr'g at 9:23 a.m. (testimony of SPO S-----).
[21] *Id.* at 9:56–9:57 a.m.

walked away, SPO S----- testified that the officers "would have just moved on."[22] But because Y------ ran, the police pursued.

Thinking he saw Y------ reach for something in his waistband (the same waistband Y----- had previously demonstrated to be empty), SPO S----- fired his taser out the window of the still-moving Durango. He missed. At the same time, Det. M-------- yelled for Y------ to get on the ground, and SPO C------ emerged from the cruiser to chase Y------ on foot. None of them ordered Y------ to drop a weapon.[23]

During the chase, SPO S----- noticed that Y------ was swinging his left arm normally while holding his right arm stiffly near his waistband.[24] Based on his training and experience—including an armed gunman training put on by the Department of Justice—SPO S----- found that behavior characteristic of someone carrying a gun without a license.[25] Holsters are bulky and easy to see, and people who are unlicensed typically do not wear them. But SPO S----- testified that he did not remember whether the training had included any information to distinguish guns from other objects (like cell phones) that people frequently carry in their pockets.[26] Det. M-------- agreed.[27]

Y------ evaded the officers for two or three more blocks before they caught up with him. After reaching Third Street, he headed east to Dupont Street, then turned south along

---

[22] *Id.* at 10:09 a.m. As SPO S----- further testified, "If [Y------] walks off, all I have is that heavy pocket and what I don't have, nothing is what it is. It's not till he flees did I see those characteristics." *Id.* at 10:08 a.m.
[23] *Id.* at 9:23–28 a.m. and 9:55–57 a.m.
[24] *Id.* at 9:25 a.m.
[25] *Id.* at 9:25 a.m. and 10:01 a.m.
[26] *Id.* at 10:05 a.m.
[27] *Id.* at 10:18 a.m. (testimony of Det. M--------).

the edge of the same park where he had started. When the officers reached Dupont Street, they saw Y------ stop suddenly and attempt to squeeze between two cars to reach the opposite sidewalk.

Eventually, Officer C------ found Y------ under a transit van, apprehended him at gunpoint, and arrested him.[28] When Det. M-------- and SPO S----- caught up, they heard Y----- exclaim "*I don't got nothing. I was just scared.*"[29] SPO S----- then searched Y------, found an ammunition magazine in his left jacket pocket (and a cell phone and small amount of cash in the front left pocket of his pants), and arrested him for misdemeanor Resisting Arrest[30] and felony Possession of Ammunition by a Person Prohibited.[31] Multiple officers searched the area for a gun, but they never recovered one from Y------ or in the vicinity.[32]

ANALYSIS

Both the Fourth Amendment and the Delaware Constitution guarantee security against "unreasonable searches and seizures."[33] Police "seize" a person in the constitutional sense when, considering the police conduct and all the surrounding circumstances, "a reasonable person would have believed that he or she was not free to ignore [the] police presence" and go about his or her business.[34] The classic seizure is an arrest, which is

---

[28] *Id.* at 9:28 a.m. and 9:58 a.m. (testimony of SPO S-----).
[29] *Id.* at 9:34 a.m. (body-worn camera audio).
[30] 11 *Del. C.* § 1257(b).
[31] The State originally charged Y------ under the statutory subsection for those who are prohibited by reason of a prior juvenile adjudication for conduct that would be a felony if committed by an adult. 11 *Del. C.* § 1448(a)(4). That charge was subsequently amended and now relies on the fact that Y------ was prohibited from owning guns and ammunition because he is under the age of 21. 11 *Del. C.* § 1448(a)(5).
[32] Suppression Hr'g at 9:59–10:00 a.m. (testimony of SPO S-----).
[33] U.S. Const. amend. IV; Del. Const. art. I, § 6.
[34] *Flonnory v. State*, 805 A.2d 854, 857 (Del. 2001) (citing *Jones v. State*, 745 A.2d 856, 869 (Del. 1999)); *see also Michigan v. Chesternut*, 486 U.S. 567, 569 (1988).

unreasonable unless justified by probable cause.[35] A *Terry* stop, in contrast, is a "limited" seizure that does not rise to the level of an arrest.[36] This type of stop is less intrusive and does not require probable cause.[37] Police need only have "reasonable[,] articulable suspicion to believe the individual detained is committing, has committed, or is about to commit a crime."[38] Of course, so long as a reasonable person *would* feel free to ignore the police, an encounter remains consensual and requires no suspicion at all.[39] But an individual "may walk or even run away" unless and until the police can justify a stop or arrest.[40]

It is the State's burden to prove by a preponderance of the evidence that the evidence seized from Y------ was legitimately obtained and may be used to prosecute him.[41] Although it is undisputed in this case that Y------ was stopped and, later, arrested and searched, the parties do not agree when that stop occurred. The issue of timing is crucial because a stop must be "justified at its inception."[42] "An illegal stop cannot be justified by circumstances that arise following its initiation."[43] The earlier that Y------'s encounter with police morphed into a stop, the smaller the universe of facts that the State may rely on to justify it. The first step in ruling on this motion, then, is to determine the moment of seizure. Only then can

---

[35] *Woody v. State*, 765 A.2d 1257, 1262 (Del. 2001) (citing *Florida v. Royer*, 460 U.S. 491, 498 (1983) (plurality opinion).
[36] *Flowers v. State*, 195 A.3d 18, 23 (Del. 2018); *see also* 11 *Del. C.* § 1902.
[37] *Woody*, 765 A.2d at 1262 (citing *Terry v. Ohio*, 392 U.S. 1, 30–31 (1968)).
[38] *McDougal v. State*, 314 A.3d 1077, 1086 (Del. 2024) (quoting *Woody*, 765 A.2d at 1262); 11 *Del. C.* § 1902(a).
[39] *Diggs v. State*, 257 A.3d 993, 1003–04 (Del. 2021) (citing *Royer*, 460 U.S. at 499 (plurality opinion)).
[40] *Woody*, 765 A.2d at 1265.
[41] *Juliano v. State*, 260 A.3d 619, 626 (Del. 2021).
[42] *Flowers*, 195 A.3d at 25 (citing *Hiibel v. Sixth Jud. Dist. Ct. of Nev., Humboldt Cty.*, 542 U.S. 177, 185 (2004)).
[43] *Woody*, 765 A.2d at 1263 (citing *Florida v. J.L.*, 529 U.S. 266, 271 (2000)).

the Court assess whether the facts and circumstances known to police at that moment justified the stop.

A. **Was the interaction between Y------ and law enforcement consensual?**

Even before determining the moment of seizure, this Court must examine whether the initial encounter between Y------ and the officers was consensual. The State contends that Y------ was only seized when the police officers turned on their emergency lights and sirens, not during the initial exchange with the officers. In contrast, based on the number of officers in the unmarked cruiser, their decision to pursue Y------ the wrong way up a one-way street, and—importantly—his own young age, Y------ claims that a reasonable person in his shoes would have felt compelled to stay far earlier: when the officers first approached him on that street and asked whether he was carrying any guns.

1. The Objective Test for a Seizure

Not every interaction with police is a seizure. Even where police lack reasonable suspicion for a stop, they generally do not violate the Fourth Amendment or Article I, Section 6, by "merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions."[44] If in response to those questions a person voluntarily consents, the

[44] *Bostick*, 501 U.S. at 434–35 (quoting *Royer*, 460 U.S. at 497 (plurality opinion)).

police may constitutionally conduct that search.[45] However, mere "acquiescence to a claim of lawful authority" is not consent.[46]

To determine when a person has been seized, a Court must "focus[] 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."[47] A person may be seized by either "physical force or [a] show of authority."[48] Under the Delaware Constitution, an officer's show of authority is a seizure even when it is unsuccessful and the person addressed does not submit.[49] It also may arise implicitly as the product of "all of the circumstances surrounding the incident."[50] That is, even when "no one of the facts . . . would by itself constitute a show of authority," a "consensual encounter with police can, subtly but surely, ripen into a show of authority that

---

[45] *See Cooke v. State*, 977 A.2d 803, 855 (Del. 2009). SPO S----- believed Y------ had consented to a search of his person when he invited the officers to check him. Suppression Hr'g at 10:08 a.m. (testimony of SPO S-----). Actual consent—in contrast to the concept of an implicitly "consensual encounter"—is a theory of justification for a search, not a seizure. A freely consenting person cannot be seized by the explicitly authorized police action. For good reason, however, the State has not argued that Y------'s short-lived "consent" affects the timing or validity of the stop in this case. The question is not whether a reasonable officer would have understood a suspect's words and actions to convey voluntary consent, or whether a particular officer had that subjective understanding, but rather whether a person actually consented, freely and voluntarily, not through "duress or coercion, express or implied." *State v. Harris*, 642 A.2d 1242, 1245 (Del. Super. Ct. 1993) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973)). Implied coercion may arise from all the surrounding circumstances, including the effect of "subtly coercive police questions" in light of a defendant's age, race, and other personal characteristics. *See id.* at 1246 (citing *Schneckloth*, 412 U.S. at 228); *United States v. Mendenhall*, 446 U.S. 544, 558 (1980). Children are particularly vulnerable to such implicit coercion, *see* Kristin Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513, 1536–37 (2018), and even an adult cannot ordinarily give voluntary consent during an illegal stop, *Lopez-Vazquez v. State*, 956 A.2d 1280, 1293 (Del. 2008); *Royer*, 460 U.S. at 507–08 (plurality opinion). Additionally, a person's exercise of the right to refuse consent is not a factor in reasonable suspicion, *United States v. Santos*, 403 F.3d 1120, 1126 (10th Cir. 2005), unless it rises to the level of unprovoked flight, *see Woody*, 765 A.2d at 1265; *cf. Commonwealth v. Warren*, 58 N.E.3d 333, 341–42 (Mass. 2016).

[46] *See Bumper v. North Carolina*, 391 U.S. 543, 548–49 (1968).

[47] *Jones*, 745 A.2d at 869.

[48] *Id.* at 862 (quoting *Terry*, 392 U.S. at 19 n.16).

[49] *Id.* at 868–69 (refusing to interpret Article I, Section 6, in lockstep with the interpretation of the Fourth Amendment announced in *California v. Hodari D.*, 499 U.S. 621, 626 (1991)).

[50] *Flowers*, 195 A.3d at 24 (quoting *Chesternut*, 586 U.S. at 573).

triggers [constitutional protections]."[51] Accordingly, when police persist in the face of a person's attempts to leave, that persistence can "clearly convey to a reasonable person" that he is not in fact free to end the encounter.[52]

2. Age as a Relevant Factor

As a general rule, neither a police officer's subjective intent nor a defendant's subjective perception is relevant to whether a seizure has occurred.[53] Objectivity promotes predictability for both citizens and police, "ensur[ing] that the scope of [constitutional] protection does not vary with the state of mind of the particular individual being approached."[54] However, one personal characteristic merits consideration here: Y------'s age.

Children are not adults. In *J.D.B. v. North Carolina*, the Supreme Court decided that children should not be treated like adults for the purposes of determining when they are in "custody" and entitled to *Miranda* warnings.[55] "[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go."[56] Age is personal, but it is not truly subjective. Age is often "objectively apparent to any reasonable officer."[57] Additionally, "the effects of youth on cognition are not entirely individualistic."[58] It generates "conclusions about behavior and perception" that are "widely

---

[51] *United States v. Mabry*, 997 F.3d 1239, 1244 (D.C. Cir. 2021).
[52] *United States v. Wilson*, 953 F.2d 116, 122 (4th Cir. 1991).
[53] *State v. Thomason*, No. IN92-07-0022-0025, 1994 WL 637294, at *3 (Del. Super. Ct. March 14, 1994) (citing *Mendenhall*, 446 U.S. at 554 n.6 (plurality opinion)); 4 Wayne R. LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 9.4(a) (6th ed. 2025).
[54] *Ross v. State*, 925 A.2d 489, 492 (Del. 2007) (quoting *Chesternut*, 486 U.S. at 574).
[55] 564 U.S. 261, 271–76 (2011).
[56] *Id.* at 272.
[57] *See id.* at 274.
[58] *Commonwealth v. Evelyn*, 152 N.E.3d 108, 117 (Mass. 2020) (citing *J.D.B.*, 564 U.S. at 272).

and easily understood" as a matter of common sense.[59] Therefore, "so long as the child's age was known to the officer . . . or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test."[60]

No Delaware Court has previously taken the step of directly extending *J.D.B.* to the Fourth Amendment context, but this Court joins other courts[61] and scholarly authorities[62] in concluding that the reasonable-child test in *J.D.B.* warrants such an extension here. Although "not identical" and designed to protect different rights,[63] the seizure and custody inquiries are tightly linked in theory and virtually indistinguishable in practice.[64] To identify a seizure, a Court must determine whether "a reasonable person would have believed he or she was not free to ignore the police presence."[65] A person may be in custody when "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave."[66] Both tests ask objectively whether "an individual has been compelled to interact with the police."[67] And, "[i]n each context, the naiveté, immaturity, and vulnerability of a

---

[59] *Id.* (citing *J.D.B.*, 564 U.S. at 272, 277).
[60] *J.D.B.*, 564 U.S. at 277.
[61] *See, e.g.*, *Evelyn*, 152 N.E. 3d at 118; *In re Elijah W.*, 74 N.E.3d 176, 182–85 (Ill. App. Ct. 2017); *In re Noah R.*, No. G049514, 2015 WL 691412, at *5 (Cal. Ct. App. Feb. 18, 2015) (citing *In re J.G.*, 175 Cal. Rptr. 3d 183, 189–91 (Cal. Ct. App. 2014)); *see also*, *e.g.*, *In re I.R.T.*, 647 S.E.2d 129, 134 (N.C. Ct. App. 2007); *In re J.M.*, 619 A.2d 497, 504–07 (D.C. 1992) (Rogers, C.J., dissenting in part).
[62] *See, e.g.*, 4 LaFave, *supra*, § 9.4(a); Henning, *supra*, at 1527–29.
[63] *Evelyn*, 152 N.E.3d at 118.
[64] *See id.*; *United States v. Bengivenga*, 845 F.2d 593, 598 (5th Cir. 1988).
[65] *Jones*, 745 A.2d at 869.
[66] *State v. R.E.*, No. JN98-3142, 98090688-00, 1999 WL 692094, at *3 (Del. Fam. Ct. May 25, 1999) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). Of course, there is a second half to the custody analysis. A person who has been seized by police is not in custody unless it is also true that the environment in which the person feels compelled to remain "presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*," meaning that a person's "freedom of movement is curtailed to a degree associated with formal arrest." *Coello v. State*, 332 A.3d 498, 505–06 (Del. 2024) (quoting *Howes v. Fields*, 565 U.S. 499, 509 (2012); *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)).
[67] *Evelyn*, 152 N.E.3d at 118.

child will imbue the objective communications of a police officer with greater coercive power" because a child's interaction with law enforcement may be qualitatively different from that of an adult.[68] "Youth are not only socialized to comply with adult authority figures, such as parents, teachers, and police, but they also have less experience to draw upon than adults, especially in the legal arena."[69] Considering a child's age is necessary to preserve the full extent of his right to be free of unjustified police intrusion, and it can be done without sacrificing the objective virtues of the traditional seizure analysis.[70] Our Supreme Court has already cited *J.D.B.* for the proposition that a child's age is relevant to the *reasonableness* of a seizure.[71] It is surely no great leap to also consider age in deciding the antecedent question of whether a seizure has occurred at all.

Y------ also invokes the different and broader protections of Article I, Section 6, of the Delaware Constitution.[72] The Delaware Constitution, like the constitutions of many of the original thirteen states,[73] has "venerable origins that precede the adoption of the Fourth

---

[68] *Id.* (citing *J.D.B.*, 564 U.S. at 271–72).
[69] Henning, *supra*, at 1523 (citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1011 (2003) (stating that youths' cognitive levels can impact their choices, and that their cognitive abilities greatly improve through life experience and education)).
[70] *Evelyn*, 152 N.E.3d at 118.
[71] *Hunt ex rel. DeSombre v. State*, 69 A.3d 360, 366 (Del. 2013).
[72] *See, e.g.*, *Jones*, 745 A.2d at 863; *Juliano*, 254 A.3d at 372; *Dorsey v. State*, 761 A.2d 807, 817 (Del. 2000).
[73] Although Delaware is often listed as one of thirteen original colonies, it may be more "arithmetically []correct" to call it one of the thirteen original states. *See* Craig Green, *Beyond States: A Constitutional History of Territory, Statehood, and Nation-Building*, 90 U. Chi. L. Rev. 813, 832–33 & n.72 (2023). Delaware had no independent colonial history, but its de facto self-governance dates nonetheless to 1704, *see* Harold B. Hancock, *Liberty and Independence: The Delaware State During the American Revolution* 3 (1976), https://archivesfiles.delaware.gov/ebooks/Liberty_and_Independence_The_Delaware_State_During_The_American_Revolution.pdf, and the Delaware Declaration of Rights was adopted in 1776, well before the Fourth Amendment's adoption in 1791, *see Mason v. State*, 534 A.2d 242, 247 (Del. 1987).

Amendment."[74] It therefore "provides a greater protection for the individual than the United States Constitution in the determination of whether a seizure by the State has occurred."[75] Even if *J.D.B.* does not compel consideration of age under the Fourth Amendment, doing so is justified under the broader mandate of Article I, Section 6. Here, then, the Court must determine if the encounter was objectively consensual, taking into account whether a reasonable child in Y------'s position would have felt free to leave.

3. Applying the Standard

Our Supreme Court has held that "the presence of uniformed police officers following a walking [adult] pedestrian and requesting to speak with him, without doing anything more, does not constitute a seizure."[76] The U.S. Supreme Court has found that the same is true when police make that request while "driving parallel to a running [adult] pedestrian," even though such a police presence "could be somewhat intimidating."[77] It is yet more intimidating when police approach by driving the wrong way up a one-way street, but that additional fact is still not enough, without more, to show that an *adult* has been seized.[78] Adults may be presumed to have the self-confidence and civic knowledge to manage such interactions with police. However, courts take a broader view of coercion when children are involved.

---

[74] *Jones*, 745 A.2d at 867.
[75] *Flonnory*, 805 A.2d at 857 (citing *Jones*, 745 A.2d at 863–64).
[76] *Ross*, 925 A.2d at 494 (citing *Jones*, 745 A.2d at 869).
[77] *Chesternut*, 486 U.S. at 575.
[78] *See Commonwealth v. Rock*, 710 N.E.2d 595, 597–98 (Mass. 1999); *United States v. Cardoza*, 129 F.3d 6, 15–16 (1st Cir. 1997); *Hill v. State*, 39 So. 3d 437, 440 (Fla. Dist. Ct. App. 2010).

i. The J.D.B. Reasonable-Child Standard and Seizure

Before the Court considers whether a reasonable child of the same age and maturity as Y------ would have believed he was free to leave, it is instructive to consider similar instances of Fourth Amendment seizures of children. In *Commonwealth v. Evelyn,* the Supreme Judicial Court of Massachusetts considered both the age and the race of a defendant in determining whether a seizure had occurred. In that case, police stopped 17-year-old Tykorie Evelyn on a cold, dark evening, after a ShotSpotter notified law enforcement of a nearby shooting.[79] Although the notification provided no description of a suspect, officers on night patrol drove up to Tykorie, a young Black male, after observing that he was holding an object in his right jacket pocket, which they believed was consistent with the size of a firearm.[80] The police cruiser drove slowly alongside Tykorie for 100 yards as he walked on the sidewalk. Tykorie avoided eye contact and turned the right side of his body away from police view, which the officers interpreted as an unnatural movement.[81] As the police officer emerged from the cruiser, Tykorie ran awkwardly away with his hand in his pocket. He appeared to discard something while in flight.[82] After the police apprehended him, they recovered a firearm on the sidewalk.[83] The Massachusetts Court determined that the appropriate test for a seizure was "whether the officer objectively communicated to a person of the juvenile's apparent age that the officer would use his or her police power to coerce the

[79] *Evelyn*, 152 N.E.3d at 114–15.
[80] *Id.* at 115
[81] *Id.*
[82] *Id.*
[83] *Id.*

juvenile to stay."[84] But because it was late at night and Tykorie was 17-years-old and six feet tall, the Court held there was insufficient evidence to conclude that the officers knew or should have known Tykorie was a minor child.[85]

Similarly, in *In Re Elijah W.,* an Illinois Appellate Court adopted the reasonable-child standard from *J.D.B.* in its Fourth Amendment analysis regarding an encounter between 13-year-old Elijah and law enforcement.[86] In that case, three police officers drove an unmarked car and approached Elijah on a city street late at night. One officer asked Elijah to "come here" twice, but Elijah declined. The police cruiser "cre[pt] down the street" without their lights and sirens activated.[87] When Elijah continued to ignore the police directive, the cruiser then drove in reverse to summon Elijah.[88] Consequently, the Court found that (1) the police officers knew or should have known that Elijah was a child and (2) a reasonable child in his shoes would not have felt free to disregard the officer's request based on the circumstances. Therefore, the encounter was not consensual.[89] Nevertheless, because Elijah was out late past curfew hours for minors, the Court found that the police demonstrated reasonable, articulable suspicion to justify the *Terry* stop.[90]

---

[84] *Id.* at 118.
[85] *Id.* at 119.
[86] 74 N.E.3d at 185.
[87] *Id.* at 179.
[88] *Id.*
[89] *Id.* at 185.
[90] *Id.* at 185–186.

ii. Y------'s Status as a Youth Was Objectively Apparent

If Y------'s age were not "known" or "objectively apparent" to the officers, of course, it could not play a role in deciding whether he was seized.[91] But, here, Det. M-------- testified at the suppression hearing that he perceived Y------ to be a "younger male" between 15 and 20 years old.[92] At the time that Det. M-------- initiated the encounter, Y------ was in fact sixteen. Unlike the *Evelyn* and *Elijah* cases, there was no report of criminal activity afoot and no obvious status offense. Although the Illinois Court determined that the child in *Elijah* was not free to leave after being trailed and summoned by the police late at night past the city curfew, Y------'s stop, by contrast, occurred in broad daylight and he neither committed a status offense nor was on probation.[93] Y------ was close enough for the officers to see his face, size, and other youthful characteristics. Furthermore, the Court can distinguish *Evelyn* because Y------ is a slight 5'5" 16-year-old who weighs 130 lbs., and Det. M-------- acknowledged that Y------ was a young male.[94] Consequently, the Court may conclude, in light of the totality of the circumstances of this stop, the officers knew or should have known that Y------ was a child.

---

[91] *See Evelyn*, 152 N.E.3d at 119.

[92] Although the Court acknowledges that Y------ would have been considered an adult if he were over 18, Det. M-------- acknowledged he was a "younger male." Given that he was not exactly sure of Y------'s age, erring on the side of recognizing Y------'s youthful characteristics would have been reasonable in light of the relevant circumstances. *See* Henning, *supra*, at 1545 (citing Phillip A. Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychology 526, 530 (2014)).

[93] It is notable that in *Johnson v. State*, the Delaware Supreme Court found the police had reasonable, articulable suspicion to stop Johnson because he was walking after curfew with two individuals that appeared to be juveniles. Paradoxically, though Mr. Johnson was not a minor, the fact that he might be a juvenile was sufficient to justify the initial investigatory stop because of concern for a curfew violation. No. 378, 2014, 2015 WL 478258, at *2 (Del. Feb. 3, 2015).

[94] Based on his DELJIS record for height and weight along with the Court's observations during the suppression hearing.

iii. The Timing of the Seizure

Considering Y------'s young age, the Court rejects the State's contention that the initial encounter was consensual and that Y------ was not seized until the police turned on their lights and sirens while pursuing him. After Y------ and his companion parted, Y------, alone, confronted three armed officers in uniform in their police cruiser—three officers known to patrol this very area and routinely conduct warrantless stops, searches, and arrests. Y------ evidently recognized the unmarked patrol car as soon as he saw it, and the coercive effect of being pursued by three officers driving the wrong way up a one-way street to approach a child cannot be underestimated.[95] Det. M-------- did not explain that Y------ was free to ignore them or that Y------ was free to decline his request to lift his shirt and expose his waistband. Unfortunately, the full exchange remains unclear because the officers failed to turn on their body-worn cameras during the initial encounter and Det. M-------- could share only a vague recollection of the details of that interaction.

As the officers followed him, "[d]espite his best efforts, [Y------] was unable to 'terminate the encounter,' 'to ignore the police presence and go about his business,' or to 'go on his way.'"[96] The officers' questions grew increasingly intrusive and pointed, and Y------ then lifted his shirt to show that he did not have a firearm.[97] A reasonable adult in Y------'s shoes may not have felt compelled to stay and respond. But, like the child in *Elijah*, a child of Y------'s age is far more susceptible to such implicitly accusatory questions, and the Court

[95] *Cf. Elijah*, 74 N.E.3d at 185 (officers initially passed the child and then drove in reverse to approach).
[96] *See Wilson*, 953 F.2d at 122.
[97] Suppression Hr'g at 10:25 a.m. (testimony of Det. M--------).

cannot ignore that reality.[98] Consequently, the Court finds that Y------ was seized when he was confronted by authority figures who had trailed him down a one-way street and now asked pointed questions suggestive of criminality and a plan to search him anyway.[99]

B. Did the officers have reasonable suspicion at the time of the stop?

Because the initial encounter between Y------ and the police was not consensual, the analysis must turn to whether the officers had reasonable, articulable suspicion at the inception of the encounter. A *Terry* stop is permitted "only if the officer has reasonable[,] articulable suspicion to believe the individual detained is committing, has committed, or is about to commit a crime."[100] It is not a high bar, but "[a] vague hunch or feeling that the defendant 'looked suspicious' will not do."[101] An officer must be able to point to facts and

---

[98] *See J.D.B.*, 564 U.S. at 281. Y------'s racial identity is no doubt inextricably linked to his age and perception of this stop and whether he was free to leave. It is probably the case that a Black child of Y------'s age would be even more likely to feel compelled to stay and submit during an encounter with police. *See* Henning, *supra*, at 1529–34. As a result of "the troubling past and present of policing and race[,] . . . African-Americans, particularly males, may believe that they have been seized in situations where other members of society would not." *Evelyn*, 152 N.E.3d at 120 (citing Tracey Maclin, *"Black and Blue Encounters"—Some Preliminary Thoughts About Fourth Amendment Seizures: Should Race Matter*, 93 Yale L.J. 243, 255 (1991)). For Black children, routine negative encounters with police at school and on the street—not to mention widespread coverage of incidents of police violence—may reinforce negative impressions and leave them yet more "particularly vulnerable to the psychological pressures of police presence." Henning, *supra*, at 1531–32. For those reasons, some courts have concluded that a person's race, in addition to their age, can play a role in whether a seizure has occurred. *See*, *e.g.*, *Dozier v. United States*, 220 A.3d 933, 944–45 (D.C. 2019); *State v. Sum*, 511 P.3d 92, 102–03 (Wash. 2022); *United States v. Washington*, 490 F.3d 765, 773–74 (9th Cir. 2007); *State v. Jones*, 235 A.3d 119, 126 (N.H. 2020); *United States v. Smith*, 794 F.3d 681, 687–88 (7th Cir. 2015); *see also United States v. Little*, 18 F.3d 1499, 1512–13 (10th Cir. 1994) (Logan, J., dissenting); *Evelyn*, 152 N.E.3d at 119–21; *but see contra United States v. Knights*, 989 F.3d 1281, 1287–89 (11th Cir. 2021); *United States v. Easley*, 911 F.3d 1074, 1081–82 (10th Cir. 2018). But because neither the Delaware Supreme Court nor the United States Supreme Court has ever expressly held that race is the kind of readily apparent external characteristic subject to broadly applicable, "commonsense conclusions about behavior and perception," *see J.D.B.*, 564 U.S. at 272—and because considering Y------'s race is not necessary to grant his motion to suppress and has not been requested by the parties—this Court declines to take that step here.

[99] *Cf. Bumper*, 391 U.S. at 550 ("Where there is coercion there cannot be consent.").

[100] *McDougal*, 314 A.3d at 1086 (quoting *Woody*, 765 A.2d at 1262).

[101] *State v. Murray*, 213 A.3d 571, 579 (Del. 2019) (quoting *Robertson v. State*, 596 A.2d 1345, 1350 (Del. 1991)).

circumstances that, taken together with the officer's rational inferences, provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."[102]

The State contends that this Court should defer to the inferences made by SPO S----- and Det. M-------- based on their specialized training. As SPO S----- conceded, the behaviors he saw before Y------ ran were innocent: "by themselves, they're nothing."[103] But individually innocent observations may together be something. SPO S----- identified several relevant observations. First, Y------ was in a "high-crime area" based upon the officers' personal experiences. Second, upon seeing the police, Y------ and his companion turned to avoid them. Third, SPO S----- saw a heavy object in Y------'s pocket. Fourth, Y------ and his companion kept walking away and looking back over their shoulders as the police approached. Fifth, Y------ separated from his companion. Sixth, Y------ approached the police and appeared to give consent to a search for weapons. Seventh, when the officers opened their doors to search him, Y------ ran. And eighth, while he ran, he appeared to clutch something heavy at his waistband that the officers believed, based on their training, might be an illegal gun.

1. Deference to Law Enforcement

It is true that this Court must give deference to "the inferences and deductions that a trained officer could make which might well elude an untrained person."[104] "[L]awful and

[102] *State v. Gillen*, No. 2211005299, 2023 WL 6622210, at *3 (Del. Super. Ct. Oct. 10, 2023).
[103] Suppression Hr'g at 10:08 a.m. (testimony of SPO S-----).
[104] *Register v. State*, 337 A.3d 1224, 1234 (Del. 2024) (quoting *Lopez-Vazquez*, 956 A.2d at 1287).

apparently innocent conduct may add up to reasonable suspicion if the detaining officer articulates 'concrete reasons for such an interpretation.'"[105] Reasonable suspicion does not require an officer to "rule out the possibility of innocent conduct."[106] But the officer must give a "cogent explanation" for why apparently innocent conduct was actually suspicious,[107] and "the trial judge's evaluation of the officer's credibility" plays an important role.[108] For several reasons, deference to the judgments made by these trained officers in the field cannot save the State's position here.

2. No Reasonable Articulable Suspicion Before the Stop

First, as the Court already concluded, Y------ was stopped when the police followed Y------ and Det. M-------- first asked him whether he was carrying a gun. *not* when the officers saw him reach for his waistband and activated their lights and sirens. However, the officers never articulated any cogent explanation for why they had a basis to stop Y------ at that time.[109] Although this Court owes deference to an officer's inference of criminal activity, it conversely must also give some respect to that same officer's conclusion that particular behavior was not reasonably suspicious.[110]

Second, while Y------'s presence in a "high-crime area" has relevance, "one does not forfeit constitutionally protected rights by living—or, for that matter being present—in a

[105] *Harris v. State*, 806 A.2d 119, 121 (Del. 2002) (quoting *Karnes v. Skrutski*, 62 F.3d 485, 496 (3d Cir. 1995)).
[106] *Murray*, 213 A.3d at 579 (quoting *United States v. Arvizu*, 534 U.S. 266, 277 (2002)).
[107] *Harris*, 806 A.2d at 129.
[108] *Lopez-Vazquez*, 956 A.2d at 1288–89.
[109] *See* Suppression Hr'g at 10:08 a.m. (testimony of SPO S-----).
[110] *Cf. United States v. Jackson*, 120 F.4th 1210, 1228 n.7 (3d Cir. 2024) (Rendell, J., dissenting).

neighborhood where the crime rate is high."[111] Moreover, the contention that the west side of Wilmington is a "high crime area" is akin to a "talismanic litany"[112] without the submission of data or "specific evidence [to support] that the area where [the] stop occurred ha[s] a reputation for criminal activity."[113] SPO S----- testified that the area around North DuPont and Conrad Streets is the relevant high-crime area.[114] But he also said that the entire west side of Wilmington is a high-crime area that merits extra patrols.[115] Either way, he did not set clear boundaries or reference any particular kind of crime, and he conceded that he is unaware of any formal designation of the area by the Wilmington Police Department.[116] Without pointing to criminal activity in progress or credibly demonstrating that the neighborhood has a propensity for daytime gun violence, the Court can give only limited weight to these broad-brush characterizations of a large swathe of Wilmington.[117]

Third, Y------'s other actions before the stop did not transform his mere presence into reasonable suspicion. There was no report of a nearby shooting, no ongoing criminal activity, and no tip from a concerned member of the public to draw the patrolling officers' attention to these two youths. That Y------ was with another person and that they turned to avoid an encounter with the police is simply not suspicious. A person who has not been seized is free

---

[111] *McDougal*, 314 A.3d at 1092.
[112] Henning, *supra*, at 1558 (quoting *Smith v. United States*, 558 A.2d 312, 316 (D.C. 1989) (en banc)).
[113] *Woody*, 765 A.2d at 1265–66 (citing *United States v. Carter*, No. A.99–50, 1999 WL 1007044, at *4 (D. Del. Oct. 22, 1999)).
[114] Suppression Hr'g at 9:20 a.m., 9:41 a.m. (testimony of SPO S-----).
[115] *Id.* at 9:40 a.m.
[116] *Id.* at 9:41–42 a.m.
[117] *See United States v. Montero-Camargo*, 208 F.3d 1122, 1138 (9th Cir. 2000) (en banc) (noting that "[t]he citing of an area as 'high-crime' requires careful examination" because when overbroad it "can easily serve as a proxy for race or ethnicity," describing "entire neighborhoods or communities in which members of minority groups regularly go about their daily business").

to "go on his way."[118] SPO S-----'s vague assertion that they turned "abruptly" adds nothing to the picture.[119] The Court struggles to understand how a person approached by police can exercise the right to avoid them and "go about his business"[120] without at some point seeing them and then turning in another direction. Nor is it obvious how a person can successfully exercise that same right without, after turning away, naturally looking back over his shoulder to determine whether the police are still following him. Finally, though the Court does not doubt that SPO S----- saw a heavy object in Y------'s pocket, he never claimed that he knew or even believed it was a gun or any other kind of contraband. To the contrary, he testified that his observations up to that point were "nothing."[121] The Court therefore finds that, at the inception of the stop, the officers lacked reasonable, articulable suspicion to stop Y------.

3. No Reasonable Suspicion Later, Either

Even if the Court erred and Y------ was not stopped until later in his encounter with the officers when he fled, the State still has not demonstrated reasonable suspicion to justify the stop. If Y------ was not seized when Det. M-------- first addressed him, he was surely seized when the officers simultaneously opened their doors to search him, or when they hit the gas to pursue him. But assume for a moment that the State is entirely correct. Assume that the officers did not stop Y------ until he fled when they saw him reach for his waistband and they turned on their lights and sirens. Assume that the officers' testimony was entirely accurate, that any uncertainties are resolved in favor of the State, and even that Y------'s

[118] *Royer*, 460 U.S. at 497–98 (plurality opinion); *see also Woody*, 765 A.2d at 1265.
[119] Suppression Hr'g at 9:21 a.m. (testimony of SPO S-----).
[120] *Illinois v. Wardlow*, 528 U.S. 119, 125 (2000).
[121] Suppression Hr'g at 10:08 a.m. (testimony of SPO S-----).

presence in a high-crime area was sufficiently established. Even then, the State still cannot prevail on reasonable suspicion. A review of relevant cases in this area helps explain why.

i. Unprovoked Flight

In some cases, of course, "unprovoked flight" from police in a "high-crime area" can demonstrate reasonable suspicion. In *Illinois v. Wardlow*, for example, a four-car police caravan converged on a high-drug area to investigate drug transactions.[122] They expected to find both lookouts and customers in the area.[123] They were not specifically looking for the defendant, and they were simply passing by, but when he looked up and saw the officers he immediately turned and fled through a gangway and an alley.[124] The U.S. Supreme Court found under the Fourth Amendment that the officers had reasonable suspicion because "unprovoked flight upon noticing the police" was "nervous, evasive behavior" that, in a high-crime area, was enough.[125]

In *Woody v. State*, the Delaware Supreme Court reached a similar conclusion under Article I, Section 6, albeit in a case with one additional factor. *Woody* recognized at the outset that an individual "may walk *or even run* away" from a mere consensual encounter with police.[126] But when flight is "unprovoked" in that a person runs "before the officers initiate[] any contact," it may be considered in the reasonable suspicion analysis.[127] In *Woody*, then, the State demonstrated reasonable suspicion where the defendant, in a high-

[122] 528 U.S. at 121.
[123] *Id.*
[124] *Id.* at 121–22.
[125] *Id.* at 124–25.
[126] 765 A.2d at 1265 (emphasis added).
[127] *Id.*

crime area, turned and fled at the mere sight of an approaching police officer and, as he ran, the police saw him "holding a bulge in his pocket that appeared to be either a gun or a large quantity of drugs."[128]

ii. Other Evasive Behavior

Evasive behaviors other than flight may also help give rise to reasonable suspicion, particularly when observed in a high-crime area. In *State v. Murray*, an officer on proactive patrol in Wilmington saw two men on the street in a high-crime area around 11:00 p.m.[129] Watching the men from a distance for about 20 seconds, the officer saw that one of them had his arm "canted" in a way that, according to his training and experience, was consistent with a person concealing a handgun in his waistband.[130] The police, of course, had not seen the man's waistband and could not know for sure whether he held a gun there. When the man noticed the police, he stutter-stepped, stopped, and then continued more slowly forward while nervously looking around the area.[131] The officer then got out of his car, and the man began "turning and blading" his body away, which the officer recognized from his training as a way to conceal a gun on the far side.[132] In those circumstances, the officer's well-explained deductions deserved deference, and the defendant's "furtive, odd behavior" in a high-crime area created reasonable suspicion.[133]

---

[128] *Id.* at 1265–66.
[129] 213 A.3d at 574.
[130] *Id.*
[131] *Id.*
[132] *Id.* at 575.
[133] *Id.* at 579–80.

iii. Recent Criminal Activity or a Status Offense

In other cases, an officer develops reasonable suspicion based not on generally suspicious behavior but rather on reports of a recent crime and on clues that the person stopped may have committed it.[134] Moreover, it is possible for an officer to justify a stop on the theory that the person stopped appeared to be guilty of a status offense such as a curfew violation.[135]

iv. No Criminal Activity, Evasive Behavior, or Violation Justified Y------'s Stop

This case is different from many cases where the police had reasonable, articulable suspicion at the start of an encounter. Unlike *In Re Elijah*, the police saw Y------ in the early evening. There was no indication that he had committed a status offense walking around the neighborhood at that time. Unlike *Evelyn*, the officers did not identify any recent reported crime in the area that prompted them to approach Y------. Unlike *Murray*, moreover, the police did not observe Y------ and gather information about "furtive, odd behavior" before stopping him. Nowhere in the record is there any description of the kind of "blading" that was so significant in *Murray*. As the Court already concluded, Y------'s initial attempt to "evade" the police—in a literal sense—by turning and walking away was nothing more than a legitimate attempt to exercise his right to turn and walk away. At first observation, SPO S----- did not think that Y------'s "mildly heavy jacket pocket" was a weapon, and Y------ was the opposite of furtive when approached by the police.[136] He walked toward them without

[134] *See, e.g.*, *Evelyn,* 152 N.E.3d at 114–15.
[135] *See, e.g.*, *Elijah*, 74 N.E.3d at 185–86. *See also, Johnson*, 2015 WL 478258 at *2.
[136] Suppression Hr'g at 9:23 a.m. (testimony of SPO S-----).

turning his body away or restricting his movement. He engaged in conversation. He spread his arms open. He lifted his shirt to show his unarmed waistband.

v. Y------'s Flight Merits Minimal Weight

The officers, of course, testified that it was Y------'s flight and his actions during it that changed the seizure analysis. The State relies also on the officer's observation that Y------ reached down and grabbed something in his waistband while running. The State is correct that, when a trained officer sees someone reaching for an apparent gun, that testimony will typically be given great weight.[137] But *Woody* instructs this Court to distinguish "unprovoked flight" from a person's exercise of the right to "run away."[138] On these facts, the Court finds that Y------'s flight was provoked and therefore entitled to little or no weight. Unlike *Woody* and *Wardlow*, Y------ did not flee at the mere sight of officers. He at first attempted to walk away, but he spoke to them calmly and in fact walked closer when they approached him.

The facts here also suggest that the officers could not reasonably believe Y------ was armed. If anything, any potential suspicion that Y------ had an unholstered gun in his waistband was dispelled when he lifted his shirt.[139] Yet the situation escalated. When the three officers opened their doors simultaneously, Y------ panicked. It is not hard to understand why. Even if he had not yet been legally seized, an encounter that had begun with following a child and asking "implicitly accusatory" questions now clearly "signaled . . .

---

[137] *See, e.g.*, *Flowers*, 195 A.3d at 31.
[138] 765 A.2d at 1265 (emphasis added)
[139] *See Terry*, 392 U.S. at 30. People, of course, carry cell phones and wallets and many other things in their pockets, and many of those things may be of similar size and weight to a firearm or magazine. In joggers, it may be necessary and practical to hold any of these things while running to keep them from flying out. Yet SPO S----- conceded on cross-examination that he was not trained to recognize any of these alternatives.

that [the officers] would detain him unless disabused of their suspicions."[140] Yet, as noted above, the officers did not indicate on the radio or to each other—even while speeding after Y------ and seeing him grab his waistband—that they believed he had a gun. Equally significant, when SPO S----- attempted to tase Y------, he did not first shout for him to drop a weapon.

Additionally, in evaluating Y------'s choice to flee, the Court cannot blind itself to the ever-present facts of his race and young age.[141] Therefore, under the circumstances, the Court finds that Y------'s flight was not unprovoked and that, unlike *Woody* and *Wardlow*, the officers did not have the requisite justifiable suspicion at the inception of the encounter.

vi. The Absence of Body-Worn Camera Audio and the Officers' Credibility

The problem is not just that Y------'s initial behaviors were not outwardly criminal (though they were not); it is that the credibility of Det. M-------- and SPO S----- was significantly undermined by their inability to recall important details or to testify consistently about basic facts. Det. M-------- was inaccurate about which of his two fellow officers was in the passenger seat next to him. The officers indicated that their attention was drawn to Y------'s long sleeves even though, as body-worn camera footage revealed, many people on the street wore long sleeves or outfits similar to Y------'s that day.[142] As discussed

---

[140] *See Mayo v. United States*, 315 A.3d 606, 628–29 (D.C. 2024).
[141] *See Warren*, 58 N.E.3d at 342; *Evelyn*, 152 N.E.3d at 125–26; *United States v. Brown*, 925 F.3d 1150, 1155–57 (9th Cir. 2019); *People v. Horton*, 142 N.E.3d 854, 858, 866–68 (Ill. App. Ct. 2019); *Mayo*, 315 A.3d at 627–32; *Washington v. State*, 287 A.3d 301, 323–25 (Md. 2022); *see also People v. Flores*, 546 P.3d 1114, 1128–29 (Cal. 2024) (Evans, J., concurring); *Wardlow*, 528 U.S. at 132 (Stevens, J., dissenting in part); *Terry*, 392 U.S. at 14 n.11, 17 n.14.
[142] *See* Respondent's Ex. 2; Respondent's Ex. 3; Respondent's Ex. 4; Respondent's Ex. 5.

previously, they reported inconsistent details about the crucial conversation with Y------ that preceded his flight. Most problematically, although the officers agreed that they became suspicious that Y------ was armed when he fled and grabbed his waistband with his right hand, SPO S----- had only seen a heavy object on Y------'s left side, and in any event, he had already shown them that his waistband was empty. Additionally, they conceded that they never indicated to each other, on the radio, or to Y------ (while attempting to tase him and shouting for him to get on the ground) that they believed he had a gun.

The Court recognizes that, in high stress situations when law enforcement must make quick judgments, the ability to recall or articulate the moments as they unfold may be challenging, which is why body-worn cameras are crucial to protect all parties. However, the inconsistencies and gaps in memory addressed herein might have been cured by body-worn camera footage. Unfortunately, none of the officers activated their body-worn cameras until well into the encounter. Failing to turn on a camera is not itself a constitutional violation, even if, as Y------ argues, it violated the Wilmington Police Department's body-worn camera policy.[143] But this Court may nevertheless consider it in evaluating whether the State's conflicting and incomplete testimony satisfied its evidentiary burden.[144] For this reason, too, the Court cannot find that there was reasonable suspicion to stop Y-------—not even at the point when the officers activated their lights and sirens.

---

[143] *State v. Seligman*, 329 A.3d 1090, 1098 (N.J. Super. Ct. App. Div. 2025); *United States v. Joseph*, 138 F.4th 797, 801 (4th Cir. 2025). A defendant's right to due process of law would be implicated, however, if the breach of the policy rose to the level of a bad-faith effort to destroy evidence or deny a defendant's access to it. *United States v. Tillard*, No. 18-CR-6091, 2020 WL 57198, at *5–6 (W.D.N.Y. Jan. 6, 2020); *see also Diggs*, 257 A.3d at 1009–10. Here, there is simply no evidence suggesting anything worse than negligence.
[144] *Cf. United States v. Garcia*, 554 F. Supp. 3d 421, 431–32 (E.D.N.Y. 2021) (collecting cases).

CONCLUSION

Under the exclusionary rule, when evidence is "the fruit of an unlawful seizure," it must be suppressed.[145] Officer C------ arrested and searched Y------ as a direct result of the stop. The magazine at issue was recovered during that search. There is no doubt, in other words, that "the discovery of the evidence came about 'by exploitation of th[e] illegality'" identified here.[146] Fleeing even an unlawful stop is a crime that may itself justify an arrest.[147] "But the crime of resisting an illegal arrest does not . . . carry with it the right to justify any search incident to an actual arrest for the crime of resisting an illegal arrest."[148]

Consequently, upon reviewing the preponderance of the evidence, the Court finds that police initially encountered a scared, compliant Black child, not on probation, casually walking in his neighborhood with his friend. Police nevertheless became focused on him and escalated the encounter to the point that he fled. The encounter at its inception was not consensual based on both the conduct of the police and Y------'s age. Moreover, the police lacked reasonable, articulable suspicion to stop him because there was no precipitating incident or criminal activity afoot prior to the stop. Although the Court does not condone a 16-year-old carrying ammunition, and Y------'s flight notwithstanding, the ammunition taken from him after his arrest is the fruit of his poisonous *Terry* stop and must be suppressed. Defendant's Motion is, therefore, **GRANTED**.

---

[145] *McDougal*, 314 A.3d at 1092.
[146] *Caldwell v. State*, 780 A.2d 1037, 1052 (Del. 2001) (quoting *Wong Sun v. United States*, 371 U.S. 471, 484 (1963)).
[147] *Jones*, 745 A.2d at 872.
[148] *Id.*

IT IS SO ORDERED.

December 5, 2025 / *Eliza M. Hirst* /
Date Written Order Issued **ELIZA M. HIRST, JUDGE**

Date Emailed to Counsel: December 5, 2025
EMH