



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAQUAN WOMACK, )  
 )  
Defendant-Below, )  
Appellant, )  
 )  
v. ) No. 223, 2022  
 )  
STATE OF DELAWARE )  
 )  
Plaintiff-Below, )  
Appellee. )

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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DATED: October 19, 2022

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## NATURE AND STAGE OF THE PROCEEDINGS

Raquan Womack was charged with Possession of a Firearm by a Person Prohibited, Possession of Ammunition by a Person Prohibited, Carrying a Concealed Deadly Weapon and Resisting Arrest.<sup>1</sup> On September 27, 2021, Womack filed a Motion to file out of time and for suppression based on *Juliano v. State*,<sup>2</sup> a decision issued days earlier by this Court.<sup>3</sup> The judge allowed the suppression motion to be heard. On September 28, 2021, a jury was selected for Womack's trial and a suppression hearing was conducted. The State supplemented the record later that day with case law.<sup>4</sup> The next day, the judge issued an oral decision denying Womack's motion.<sup>5</sup> She concluded that, after a valid traffic stop of a vehicle, Womack, the front-seat passenger, was lawfully detained and arrested by police. Thus, she ruled, a subsequent resisting of that arrest justified a search of his book bag which yielded a loaded .38 Special revolver. Womack's trial began following the issuance of the decision. In the end, the jury convicted him of all counts.

On June 3, 2022, Womack was sentenced to 5 mandatory years in prison followed by probation.<sup>6</sup> This is his Opening Brief in support of a timely-filed appeal.

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<sup>1</sup> A1, 7-9.

<sup>2</sup> 260 A.3d 619, 631-632 (Del. 2021).

<sup>3</sup> A10.

<sup>4</sup> A51.

<sup>5</sup> September 29, 2021 Oral Decision denying Defendant's Motion to Suppress, Ex.A.

<sup>6</sup> June 3, 2022 Sentence Order, Ex.B.

## SUMMARY OF THE ARGUMENT

1. In our case, police had probable cause to stop the car driven by Jimenez based on an observed traffic violation- a dragging auto part. Police were further authorized to order both Jimenez and Womack, (the front-seat passenger), out of the car for purposes of an investigation limited to the scope of the traffic stop. Within that lawful detention, police observed that Jimenez was nervous, had glassy eyes and smelled of marijuana. Because Jimenez had “a few capiases,” police lawfully arrested him. Police did not smell marijuana on Womack. Upon his exit from the car, he was cooperative, provided no reasonable suspicion of criminal activity and posed no threat to officer safety. He was even informed he would be released shortly. Nonetheless, police detained him while they continued an investigation into the driver’s non-violent “personal use” activity. As there were no independent facts sufficient to justify this continued detention, it was unlawful. Assuming, *arguendo*, the continued detention remained lawful, the circumstances in our case demonstrate that it was transformed into an arrest when police attempted to handcuff Womack. Since there was no probable cause to support the arrest, it was unlawful. Thus, evidence seized as a result of his subsequent resisting an illegal arrest should have been suppressed.

## STATEMENT OF FACTS

On June 15, 2020, New Castle County Police Officer Drew Hunt, (“Officer Hunt”), a member of the Mobile Enforcement Response Team, (“MERB”), stopped a car at the intersection of Duncan Street and Eighth Avenue in Wilmington. The officer claimed the stop was based on his observation of an unknown auto part that was dragging from the car’s undercarriage and was grinding on the pavement. While there were only two individuals in the car, two other MERB officers arrived on scene, each in their own cars.<sup>7</sup>

Officer Hunt testified at a suppression hearing that once he stopped the car, he approached the driver’s side while one of the other responding officers, Officer Webb, approached the passenger’s side. Hunt claimed that he observed both the driver and the front-seat passenger each smoking a cigarette. According to the officer, based on his experience, individuals tend to light up cigarettes prior to police contact in order to mask the odor of marijuana in a car.<sup>8</sup> He also characterized the passenger as “extremely nervous” because he was “taking shallow breaths and speaking very quietly.”<sup>9</sup> Police obtained the driver’s license and identified him as Dellinel Jimenez, (“Jimenez”). They obtained the passenger’s pedigree and

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<sup>7</sup>A35, 38.

<sup>8</sup>A35-36.

<sup>9</sup>A35.

identified him as Raquan Womack, (“Womack”). When Hunt ordered Jimenez out of the car, he noticed that he was nervous, that his eyes were glassy and that he smelled of marijuana. After police discovered that Jimenez had a “a few capiases” police handcuffed and secured him in the back of a police car.<sup>10</sup>

Meanwhile, Officer Webb ordered Womack out of the front passenger’s seat and took him to the back of the patrol car for questioning.<sup>11</sup> According to Officer Hunt, while Womack was not handcuffed at this point, “[h]e was detained. He was not free to go[.]” But, Hunt stressed that Womack was “not arrested.”<sup>12</sup> As soon as Webb finished questioning Womack, he allowed Womack return to his seat in the car while police determined whether he would be free to leave and “if he could take the vehicle” for the driver.<sup>13</sup> In fact, Officer Webb told Womack that he would “be out of here in a few minutes, something along those lines, you’d be free to go.” Hunt explained to the judge that police did not smell any marijuana on Womack<sup>14</sup> and that they had no reason to believe Womack might be arrested.<sup>15</sup>

Next, while the driver remained secured in the police car, officers decided to search the stopped car based solely on “the odor of marijuana emanating from

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<sup>10</sup>A36.

<sup>11</sup>A36.

<sup>12</sup>A36.

<sup>13</sup>A36.

<sup>14</sup>A40.

<sup>15</sup>A36.

Jimenez's [i.e. the driver's] person."<sup>16</sup> Accordingly, Womack was ordered back out of the car to prevent any interference with the search and as a precaution for officer safety.<sup>17</sup> When Womack got out this second time, he brought with him a white Michael Kors bookbag that had been resting by his feet in the car.<sup>18</sup>

Womack was taken by a third officer, Officer Canaan, over to a sidewalk which was about 5'-10' away from the car.<sup>19</sup> The officer stayed with him as the car was searched. Hunt testified that Womack was still not under arrest. He did acknowledge, however, that Womack was still being detained as he was "not free to leave."<sup>20</sup> The officer also explained that the length of the typical vehicle search could "[r]ange from ten to twenty minutes, sometimes more, sometimes less, approximately ten to twenty minutes."<sup>21</sup>

About 30 seconds into the search, Officer Webb found 2.55 grams of marijuana under the driver's seat. As Officer Hunt acknowledged, this was an amount consistent with personal use.<sup>22</sup> Webb communicated his discovery to Canaan who was still with Womack. It was at this point, 15 minutes after the initial

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<sup>16</sup>A36-37.

<sup>17</sup>A37.

<sup>18</sup> A37.

<sup>19</sup>A37.

<sup>20</sup>A37.

<sup>21</sup>A37.

<sup>22</sup>A37,39-40.



stop, that Officer Canaan began to put handcuffs on Womack.<sup>23</sup> Hunt admitted that it was the discovery of the evidence related to the driver that prompted the decision to handcuff Womack.<sup>24</sup> He also stated that Womack would eventually have been free to go if the continued search of the car failed to yield anything incriminating against him.<sup>25</sup>

As Officer Canaan began to place the handcuffs on him, Womack, who was wearing the bookbag, pulled away from the officer and fled on foot.<sup>26</sup> All three officers pursued Womack for 2 minutes. Finally, Womack fell to the ground and was apprehended. However, the backpack was not with him. After a search of the area, police found the bookbag, searched it and found a .38 special loaded with 5 live rounds of ammunition as well as a pay stub, credit cards and debit cards belonging to Womack.<sup>27</sup> Police claimed that it was only after Womack fled and was apprehended that he was actually arrested, and that the basis of his arrest was for the charge of resisting arrest.<sup>28</sup> Womack was charged with offenses related to the possession of the firearm and ammunition found in the bookbag.

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<sup>23</sup>A40.

<sup>24</sup>A39, 42.

<sup>25</sup>A43.

<sup>26</sup>A37

<sup>27</sup>A38.

<sup>28</sup>A38.

**I. THE TRIAL COURT ERRED WHEN IT REFUSED TO SUPPRESS EVIDENCE SEIZED BY POLICE AS A RESULT OF WOMACK’S FLIGHT FROM A DETENTION THAT WAS CONTINUED, WITHOUT INDEPENDENT JUSTIFICATION, BEYOND THE SCOPE OF A LAWFUL TRAFFIC STOP OR FROM AN ARREST THAT WAS NOT SUPPORTED BY PROBABLE CAUSE.**

*Question Presented*

Whether the trial court erred when it failed to suppress the firearm found in a bookbag seized by police after Womack, a front-seat passenger in a car that was lawfully stopped, fled as he was being handcuffed following a 15 minute detention that continued beyond the scope of the justification of the initial stop, was not based on any individualized suspicion and continued during an investigatory search of the car conducted based on the belief that the driver was engaged in activity involving the personal use of marijuana<sup>29</sup>

*Standard and Scope of Review*

This Court reviews “a trial court's denial of a motion to suppress for abuse of discretion. To the extent the claim of error implicates questions of law; however, the standard of review is *de novo*. [This Court] review[s] a trial judge's factual findings to determine whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.”<sup>30</sup>

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<sup>29</sup> A10.

<sup>30</sup> *Holden v. State*, 23 A.3d 843, 846 (Del. 2011).

## *Argument*

“A police officer who observes a traffic violation has probable cause to stop the vehicle and its driver.”<sup>31</sup> If the officer “makes a traffic stop, the driver [and any passengers] of the car [are] seized within the meaning of the Fourth Amendment.”<sup>32</sup> While the officer may order all occupants “out of the vehicle pending completion of the traffic stop[,...]the scope and duration of the detention must be reasonably related to the initial justification for the traffic stop.”<sup>33</sup> “[A]ny investigation of the vehicle or its occupants that goes beyond the initial purpose “constitutes a separate seizure that must be supported by independent facts sufficient to justify the additional intrusion.”<sup>34</sup> To the extent an officer does have suspicion for a continued detention, any eventual arrest resulting therefrom must be supported by probable cause.

In our case, police had probable cause to stop the car driven by Jimenez based on an observed traffic violation- a dragging auto part. Police were further authorized to order both Jimenez and Womack, (the front-seat passenger), out of the car for purposes of an investigation limited to the scope of the traffic stop. Within that lawful detention, police observed that Jimenez was nervous, had glassy eyes and

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<sup>31</sup> *Id.* at 847.

<sup>32</sup> *Brendlin v. California*, 551 U.S. 249 (2007).

<sup>33</sup> *Holden*, 23 A.3d at 847.

<sup>34</sup> *Caldwell v. State*, 780 A.2d 1037, 1047 (Del. 2001).

smelled of marijuana. Because Jimenez had “a few capias,” police lawfully arrested him.

Police did not smell marijuana on Womack. Upon his exit from the car, he was cooperative, provided no reasonable suspicion of criminal activity and posed no threat to officer safety. He was even informed he would be released shortly. Nonetheless, police detained him while they continued an investigation into the driver’s non-violent “personal use” activity. As there were no independent facts sufficient to justify this continued detention, it was unlawful. Assuming, *arguendo*, the continued detention remained lawful, the circumstances in our case demonstrate that it was transformed into an arrest when police attempted to handcuff Womack. Since there was no probable cause to support the arrest, it was unlawful. Thus, evidence seized as a result of his subsequent resisting an illegal arrest should have been suppressed.

***Womack’s Continued Detention After The Driver Was Arrested And  
During the Car Search Was Unlawful***

Womack’s detention after Jimenez’s arrest and during the car search was a violation of his right to be free from unreasonable seizures because police had no independent facts to justify this additional intrusion.<sup>35</sup> During the initial stop, Womack had substantial interaction with police. He was ordered out of the car,

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<sup>35</sup>A36.

taken to the back of a patrol car, questioned, returned to his seat in the stopped car and had more conversation with police. Yet, during that time, Womack provided no reason for police to believe he was involved in criminal activity or reason for officers to fear for their safety.<sup>36</sup> Specifically, Hunt testified he smelled no odor of marijuana on Womack.<sup>37</sup>

Just prior the car search, Officer Webb told Womack that he would “be out of here in a few minutes, something along those lines, you’d be free to go.” Hunt testified that, at that point, Womack was only being detained in order to determine if it would be feasible to let him take Jimenez’s car. However, a decision was made to conduct a car search instead.

The record reveals that police had no intention to search the car until after the focus of the stop shifted to investigating Jimenez’s personal marijuana use. Hunt testified that the search was based on “the odor of marijuana emanating from Jimenez’s person.” In other words, it was based on suspicions that Jimenez was committing or had committed some offense involving his own use of marijuana, not

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<sup>36</sup> Officer Hunt testified that certain procedures were followed for purposes of “officer safety.” However, he did not provide any indication that Womack posed any individualized threat to officer safety.

<sup>37</sup> With respect to Jimenez, the factors of nervousness, glassy eyes and odor of marijuana on him are the more particularized facts discussed in *Juliano v. State*, 260 A.3d 619, 631-632 (Del. 2021). This is contrasted with the lack of any such factors related to Womack.

a violent offense or a conspiracy-related offense.<sup>38</sup> Clearly, it was determined that it would not be feasible for Womack to take the car for Jimenez. Thus, Womack's presence during the search was not required and he should have been released.<sup>39</sup> Yet, as Hunt conceded, Womack was not free to leave.

Police intended to continue Womack's detention throughout the investigatory search which was anticipated to take about 15-20 minutes. This meant the detention was to continue even after the discovery of the marijuana under the driver's seat.<sup>40</sup> Thus, Womack's continued detention was exclusively investigatory in nature. As a result, it was required to "be justified by objective and reasonably articulable facts suggesting criminal activity on [Womack]'s part."<sup>41</sup>

At the time police decided to detain Womack for further investigation, police did not possess facts independent of those related to the initial traffic stop or to the driver that justified detaining Womack during the search.<sup>42</sup> Hunt admitted as much.

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<sup>38</sup> See *Arizona v. Gant*, 556 U.S. 332, 344 (2009) (holding search of car unreasonable "[b]ecause police could not reasonably have believed either that [the defendant] could have accessed his car at the time of the search or that evidence of the offense for which he was arrested might have been found therein").

<sup>39</sup> *State v. Baker*, 229 P.3d 650, 658 (Utah 2010) ("when a traffic stop culminates in the arrest of a vehicle driver, the purpose of the stop as to the passengers ends when the officers have finished the activities incident to the arrest"); *State v. Gettling*, 229 P.3d 647, 648 (Utah 2010) (holding passenger unlawfully detained without continued justification because the purpose of the stop ended with driver's arrest).

<sup>40</sup>A40-41.

<sup>41</sup> *State v. Taylor*, 740 N.E.2d 704, 709 (Ohio App. 3d 2000).

<sup>42</sup> *Id.* at 711-12.

There was no reason to believe Womack would be arrested before the car search *investigating the driver's personal use activity* and, if nothing was found incriminating Womack after of that car investigation, he would be released. Since police had no individualized reasons to justify the detention, Womack's compelled presence pending the search extended his detention and was unlawful.

***Assuming Police Were Permitted to Detain Womack Throughout The Car Search, They Unlawfully Arrested Him When They Began To Handcuff Him***

Assuming, *arguendo*, Womack's continued detention after Jimenez's arrest and during the car search was lawful, Officer Canaan transformed the detention into an arrest requiring probable cause when he began to handcuff Womack. It is true that an investigatory detention "does not turn into a full arrest merely because the officers use handcuffs[.]"<sup>43</sup> However, as this Court has recognized, an investigatory stop "may ripen into an arrest if the duration of the stop or the amount of force used in the situation is unreasonable."<sup>44</sup> While Officer Hunt and the State claim the handcuffs are of no import in our case, they are simply wrong. In assessing whether the use of hand cuffs signifies that a detention has transformed into an arrest, courts look to whether the circumstances warrant the use of the physical restraint during the investigatory detention.

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<sup>43</sup> *Flowers v. State*, 195 A.3d 18, 25–26 (Del. 2018) (internal citation and quotation marks omitted).

<sup>44</sup> *Id.*

After detaining a cooperative<sup>45</sup> Womack for purely investigatory purposes for about 15 minutes, Officer Canaan decided to handcuff him due to the discovery of 2.55 grams of marijuana found under the driver’s seat.<sup>46</sup> At that point, “there [wa]s simply no evidence that the officers had a reason to fear for their safety or any other justification for handcuffing [Womack] while pursuing their investigation.”<sup>47</sup> The officers outnumbered Womack three to one, (the driver was in the patrol car in handcuffs). And, one officer was specifically assigned to stand with Womack 5’-10’ away from the car. The offense that police were investigating was not violent in nature. Nor was the offense one involving a large drug trafficking operation or conspiracy.<sup>48</sup> It was a personal drug use case involving the driver, not Womack.

Officer Hunt’s answer to a direct question by the judge made it clear that Womack was being handcuffed for reasons other than those which justify physical restraints during an investigatory detention.

Trial Court: But wasn’t the decision to handcuff Mr. Womack predicated on the finding of the marijuana?

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<sup>45</sup> *Longshore v. State*, 924 A.2d 1129, 1145 (Md. 2007) (considering defendant’s cooperative behavior in assessing circumstances to justify use of handcuffs in detention).

<sup>46</sup> A42.

<sup>47</sup> *State v. Moore*, 25 S.W.3d 383, 387 (Tex. App. 2000). See *Longshore*, 924 A.2d at 1145 (considering officer safety in assessing circumstances to justify use of handcuffs in detention).

<sup>48</sup> *Moore*, 25 S.W.3d 383, 387 (Tex. App. 2000) (considering non-violent nature of the offense in assessing circumstances to justify use of handcuffs in detention); *People v. Arnold*, 914 N.E.2d 1143, 1151 (2009) (considering the non-violent nature of the offense in assessing circumstances to justify use of handcuffs in detention).



Officer Hunt: Yes.<sup>49</sup>

The discovery of the personal use marijuana under the driver’s seat also did not provide probable cause to arrest Womack, the front seat passenger. Thus, “on this record, the handcuffing transformed the detention into an arrest for which there was no probable cause.”<sup>50</sup>

***Resisting Illegal Arrest Did Not Justify The Search Incident To Arrest***

At the time Womack pulled away from Officer Canaan and fled, he was either being unlawfully detained beyond the scope of the initial stop or being arrested without probable cause. Because the unlawful “seizure preceded [Womack’s] attempt to flee, that attempt or any information derived therefrom, is not a proper factor in assessing the validity of a seizure.”<sup>51</sup> “[T]he crime of resisting an illegal arrest does not necessarily carry with it the right to justify any search incident to an actual arrest for the crime of resisting an illegal arrest.”<sup>52</sup> As this Court stated in *Jones v. State*, “[t]he purpose behind the rule that

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<sup>49</sup> A42.

<sup>50</sup>*Id.* See *Longshore*, 924 A.2d at 1145 (looking to circumstances to indicate level of restraints that are reasonable precautions during investigatory detentions); *Arnold*, 914 N.E.2d at 1151 (finding defendant was arrested as soon as he was handcuffed because the use of handcuffs was not reasonably necessary for investigatory stop); *People v. Smith*, 13 P.3d 300, 305 (Colo. 2000) (looking to circumstances to indicate level of restraints that are reasonable precautions during investigatory detentions); *Reynolds v. State*, 592 So.2d 1082 (Fla.1992) (“use of handcuffs after the pat-down was illegal,” as “the suspects offered no resistance, were not particularly belligerent, and did not make any threats”).

<sup>51</sup> *Jones v. State*, 745 A.2d 856, 861–62 (Del. 1999).

<sup>52</sup> *Id.*

resisting even an illegal arrest constitutes a crime” should not be used to encourage officers to make illegal arrests by allowing them to use evidence obtained as a result.<sup>53</sup> And because the officers’ unlawful detention and/or arrest provoked Womack’s act of throwing the bookbag, the firearm and ammunition found therein should have been suppressed as fruit of the unlawful arrest.<sup>54</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Jones v. State*, 28 A.3d 1046, 1057 (Del. 2011) (holding theory of abandonment does not apply when provoked by unlawful conduct of police).

## CONCLUSION

For the reasons and upon the authorities cited herein, Womack's conviction must be reversed.

Respectfully submitted,

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