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IN THE SUPREME COURT OF THE STATE OF DELAWARE

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| HAKEEM WATSON,<br><br>Defendant Below,<br>Appellant,<br><br>v.<br><br>STATE OF DELAWARE,<br><br>Plaintiff Below,<br>Appellee. | No. 181, 2024<br><br>On appeal from the Superior Court of the State of Delaware |

# STATE'S ANSWERING BRIEF

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## NATURE OF PROCEEDINGS

Hakeem Watson was arrested on January 8, 2023, after fleeing a traffic stop and discarding a firearm.[1] A Superior Court grand jury indicted him on charges of possession of a firearm by a person prohibited ("PFBPP"), possession of ammunition for a firearm by a person prohibited ("PABPP"), carrying a concealed deadly weapon ("CCDW"), resisting arrest, and illegal possession of a controlled substance.[2] The State dismissed the drug charge shortly thereafter.[3]

Watson filed a pretrial motion for relief from prejudicial joinder.[4] The Superior Court granted the motion, severing the person-prohibited counts (the "*B* case") from the others (the "*A* case").[5]

The *A* case proceeded to trial on January 8, 2024.[6] Watson objected to the State's proposed flight instruction, but the Superior Court overruled him.[7] At the close of the State's case-in-chief, Watson moved for judgment of acquittal on the CCDW charge, but the

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[1] A1, at Docket Item ("D.I.") 1; A44–49.
[2] A1, at D.I. 2; A10–12.
[3] A1; A36.
[4] A3–4, at D.I. 17.
[5] A4, at D.I. 23.
[6] A5–6, at D.I. 25, 29.
[7] A35; A41.

court denied the motion.[8] The jury found Watson guilty of CCDW and resisting arrest.[9]

After the verdict in the *A* case, the *B* case proceeded to trial before the same jury.[10] The parties stipulated that Watson was a person prohibited from possessing a firearm on January 8, 2023.[11] The jury convicted Watson of PFBPP and PABPP.[12]

The State moved to declare and sentence Watson as a habitual offender.[13] On April 19, 2024, the Superior Court granted the motion and sentenced Watson: (i) for PFBPP, as a habitual offender, to 20 years at Level V incarceration; (ii) for PABPP, to 8 years at Level V, suspended for 18 months at Level III probation; (iii) for CCDW, to 8 years at Level V, suspended for 18 months at Level III; and (iv) for resisting arrest, to a $200 fine.[14]

Watson filed a timely notice of appeal. He filed an opening brief on September 30, 2024. This is the State's answering brief.

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[8] A78–79.
[9] A5–6, at D.I. 29.
[10] A8, at D.I. 8; A96–97.
[11] A8, at D.I. 5.
[12] A8, at D.I. 8.
[13] A8, at D.I. 13.
[14] A8–9, at D.I. 14–16; Opening Br. Ex. C, at 1–3.

## SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. The State's evidence supported the issuance of a flight instruction, and the instruction given did not violate the constitutional prohibition against comments on the evidence. The instruction was substantially similar to other flight instructions upheld by this Court. It accurately stated the legal significance of Watson's flight, delineated the proper purposes for which the evidence could be considered, and left the factual determinations to the jury.

II. The Appellant's argument is denied. The State presented sufficient evidence for a rational trier of fact to find that Watson knowingly concealed a firearm in the commission of CCDW. Officer Crumlish observed Watson from the side and rear as Watson exited the stopped vehicle and fled on foot. The officer did not observe a firearm until Watson slowed down and reached down toward the front of his person to retrieve it. The officer's body-worn-camera footage showed that Watson did not have a holster to open carry the firearm. The rational inference was that Watson knowingly concealed the firearm in his pants or under his coat until he had an opportunity to discard it.

## STATEMENT OF FACTS

At approximately 8:45 p.m. on January 8, 2023, while driving in his marked patrol vehicle, Wilmington Police Officer Logan Crumlish noticed a black Chevrolet Impala with heavy window tint.[15] He could not see inside the Impala or discern whether there were any passengers.[16] He followed the Impala southbound on Spruce Street and checked for a tint waiver.[17] There was none, so Officer Crumlish activated his emergency lights to conduct a traffic stop.[18]

The vehicles were approaching 7th Street when Officer Crumlish turned on his emergency lights.[19] The Impala drove about two more blocks and then turned eastbound on 6th Street.[20] The Impala traveled to the end of the block before stopping near Church Street.[21]

As soon as the Impala came to a stop, the passenger door opened.[22] Hakeem Watson quickly exited the vehicle and fled

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[15] A44–45.
[16] A45.
[17] A45
[18] A45–46.
[19] A45.
[20] A46.
[21] A46.
[22] A46.

southbound on Church Street.[23] Officer Crumlish first observed Watson exit from a "side profile."[24] He did not see a firearm.[25]

Officer Crumlish left the Impala to pursue Watson in his patrol vehicle.[26] Between street lights and headlights, Officer Crumlish could see Watson clearly.[27] On the 500 block of Church Street, Watson slowed, reached down, and "pull[ed] a black object from the front of his person and thr[e]w it over a fence."[28] He then continued to run southbound on Church Street.[29] He turned westbound on 5th Street and ran to Allens Alley, where he was apprehended.[30] Watson told Officer Crumlish that he ran because he was scared.[31]

After taking Watson into custody, Officer Crumlish returned to the area where Watson threw the black object.[32] There, he found a black firearm, about 10 feet on the other side of the fence.[33] The

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[23] A46; A50.
[24] A54.
[25] *See* A50.
[26] A46–47.
[27] A51.
[28] A47; A51.
[29] A47.
[30] A48.
[31] A57.
[32] A50.
[33] A50.

firearm had no serial number and was loaded with nine-millimeter ammunition, including one round in the chamber.[34] Officer Crumlish checked the area for any other black objects and found none.[35]

Watson was a person prohibited from possessing a firearm or ammunition.[36] He did not have a concealed-carry permit.[37]

[34] A51–52.
[35] A51.
[36] A97.
[37] A53.

## ARGUMENT

### I. The Superior Court's flight instruction was appropriate and did not violate the constitutional prohibition against judges commenting on the evidence.

#### Question Presented

Whether the Superior Court's flight instruction commented on the evidence in violation of article IV, § 19 of the Delaware Constitution.

#### Scope of Review

This Court reviews the issuance of a jury instruction over the defendant's objection *de novo*.[38] It also considers whether the jury instructions, examined as a whole, correctly stated the law.[39]

#### Merits of Argument

At trial, the State presented evidence that Watson fled a traffic stop on foot and, during the flight, discarded a firearm that he had been carrying concealed.[40] Under Delaware law, a flight instruction is

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[38] *Robertson v. State*, 41 A.3d 406, 408 (Del. 2012).
[39] *Claudio v. State*, 585 A.2d 1278, 1282 (Del. 1991).
[40] A46–51.

appropriate when: (i) there is evidence of flight or concealment; and (ii) the evidence reasonably support an inference that the defendant fled because of a consciousness of guilt and a desire to avoid an accusation based thereon, or for some other reason.[41] It was reasonable to infer that Watson fled to avoid culpability for the firearm offense. The Superior Court therefore gave a flight instruction to the jury, stating:

> The State contends that the defendant evaded arrest and took flight after committing the crime. Evidence of fight -- flight and evasion of arrest is admissible as a circumstance tending to show consciousness of guilt. Such evidence also may be relevant to identification of the defendant as the person who committed the crime.
>
> You may consider this evidence only for this limited purpose. You may not consider evidence of flight or evasion of arrest as proof that the defendant is a bad person and, therefore, [probably] committed the crime.
>
> The evidence of flight or evasion of arrest must be considered by you in light of all the other evidence.[42]

Watson claims the flight instruction violated article IV, § 19 of the Delaware Constitution by impermissibly commenting on the

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[41] *Robertson*, 41 A.3d at 409; *Staats v. State*, 902 A.2d 1125, 1128 (Del. 2006); *Thomas v. State*, 467 A.2d 954, 958 (Del. 1983); *Tice v. State*, 382 A.2d 231, 233 (Del. 1977).
[42] A92.

evidence.[43] Section 19 provides that "[j]udges shall not charge juries with respect to matters of fact, but may state the questions of fact in issue and declare the law." For the most part, Watson appears to challenge the language and application of the particular instruction issued in his case, rather than flight instructions generally.

Regardless of the framing, Watson's arguments walk a well-trodden path. The instruction given at Watson's trial was not unique. This Court has repeatedly upheld the propriety of flight instructions, including those that mirrored Watson's.[44] It has considered many of the same authorities upon which Watson now relies.[45] Like the instructions those prior cases, the one issued in Watson's trial was constitutional.

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[43] Opening Br. 8, 10–11.
[44] *Robertson*, 41 A.3d at 409–10.
[45] *Compare id.* at 410 n.8 (citing *Thompson v. State*, 901 A.2d 208, 2019 (Md. 2006), for collecting cases that adopted the minority rule against flight instructions, which included *Hadden v. Wyoming*, 42 P.3d 495 (Wyo. 2002); *Dill v. Indiana*, 741 N.E.2d 1230 (Ind. 2001); *Kansas v. Cathey*, 741 P.2d 738 (Kan. 1987); and *South Carolina v. Grant*, 272 S.E.2d 169 (S.C. 1980)), *with* Opening Br. 11 nn.5–6 (relying on *Hadden*, *Dill*, *Cathey*, and *Grant*).

### A. The flight instruction was substantially similar to the instruction deemed constitutional in *Robertson*.

The Superior Court maintains pattern jury instructions.[46] Those pattern instructions serve as guidelines for judges in crafting their own charges.[47] Consequently, jury instructions from case to case often take a similar form with similar substance. Watson's flight instruction is no exception. A like instruction appeared in *Robertson*.[48]

The appellant, Stephanie Robertson, had grabbed Brenda Herd by the arm while holding a double-bladed knife.[49] Robertson left the scene "after realizing Herd was cut" because "she feared she would go to jail."[50] The Superior Court gave a flight instruction over Robertson's objection.[51] The jury then convicted her of second-degree assault and related crimes.[52] On appeal, Robertson argued that the flight instruction unconstitutionally commented on the facts.[53]

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[46] Delaware Courts, Criminal Pattern Jury Instructions, *available at* https://courts.delaware.gov/superior/pattern/pdfs/pattern_criminal_jury_rev5_2022a.pdf (last accessed Oct. 29, 2024) [hereinafter Criminal Pattern Jury Instructions].
[47] *Id.* at 1.
[48] 41 A.3d at 407–10.
[49] *Id.* at 408.
[50] *Id.* at 409.
[51] *Id.* at 408.
[52] *Id.* at 407.
[53] *Id.* at 409–10.

This Court rejected Robertson's claim and held that the "instruction on flight was not a comment on the evidence in violation of Article IV, Section 19."[54] The evidence admitted at trial justified the instruction, and the instruction accurately explained the legal significance of Robertson's flight.[55]

Comparing the *Robertson* instruction against Watson's reveals a considerable likeness. They used the same introduction: "[T]he State contends that the defendant evaded arrest and took flight after committing the crime [or charged offense]."[56] Both stated that flight and evasion evidence "is admissible as a [the] circumstance[s] tending to show consciousness of guilt."[57] Both included a limiting instruction: "You may consider this [any such] evidence only for this limited purpose [for this limited purpose only]. You may not consider evidence of flight or evasion of arrest [evasion of arrest or flight] as proof that the defendant is a bad person and, therefore, probably committed the crime [offense]."[58] Both then directed the jury to

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[54] *Id.*
[55] *Id.* at 409.
[56] *Compare* A92, *with Robertson*, 41 A.3d at 408.
[57] *Id.*
[58] *Id.*

consider the flight or evasion evidence "in light of all the other evidence [other facts proved]."[59] Watson's instruction was even more forceful on this point, using the compulsory "must"; the instruction upheld in *Robertson* used only the permissive "may."[60]

The most significant deviation within the flight instructions comes at their conclusions. In *Robertson*, the trial judge added: "Whether or not such evidence shows consciousness of guilt and the significance to be attached to such evidence are matters solely for your determination."[61] The trial judge in Watson's case did not state this directive at the end of the flight instruction—but he did read a generic version of the same guidance a few moments earlier: "[T]he Delaware Constitution prohibits me from commenting on the evidence. The determination of the true facts, and the drawing of any inferences from the proven facts, are matters solely within your responsibility."[62] Jury instructions are, of course, considered as a whole and not piecemeal without context.[63] When considered as a

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[59] *Id.*
[60] *Id.*
[61] 41 A.3d at 408.
[62] A91–92.
[63] *Claudio*, 585 A.2d at 1283.

whole, Watson's instructions provided nearly identical guidance as those given in *Robertson*.

*Robertson* upheld not only the propriety of flight instructions generally, but also of the specific instruction given in that case.[64] After quoting the instruction given in full, this Court held that "[*t*]*he Superior Court's instruction* on flight was not a comment on the evidence."[65] That statement referred to a specific instruction—the one quoted—and not to flight instructions generally. This Court then addressed specific portions of the instruction given: (i) the statement of the evidence's legal significance; and (ii) the limitation on the use of the evidence.[66] In discussing the latter, this Court again quoted the language of the instruction given.[67]

The *Robertson* flight instruction mirrors not only Watson's, but also the pattern jury instruction.[68] The language that this Court reviewed and endorsed in *Robertson* is thus susceptible of repetition,

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[64] 41 A.3d at 409–10.
[65] *Id.* at 409 (emphasis added).
[66] *Id.*
[67] *Id.*
[68] Criminal Pattern Jury Instructions, *supra*, at 65.

as judges draw from the pattern instruction. It reappeared in the instant case. It did so earlier this year in *Cosden v. State*,[69] too.

If *Robertson* stands both for the proposition that flight instructions are generally valid *and* for the proposition that the specific language of the pattern instruction is sound, the decision leaves little room to challenge a flight instruction, unless the trial judge significantly deviates from the usual substance. Perhaps for that reason, the appellant in *Cosden* attempted to distinguish *Robertson* along general/specific lines.[70] He conceded that *Robertson* upheld the constitutionality of flight instructions generally but argued that "*Robertson* did not pass on the precise wording of the instruction."[71]

The appellant in *Cosden* had not objected to the flight instruction at trial, so this Court reviewed the claim only for plain error.[72] Because it was not adjudicating the claim on the merits, this Court did not need to accept or reject the premise of the appellant's arguments. It simply addressed them as they were presented.[73]

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[69] 2024 WL 1848602, at *4 (Del. Apr. 29, 2024).
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.* at *4–5.

In doing so, the Court reinforced its prior endorsements of the instruction used in *Robertson*. It answered other, related questions asked about the specific wording used. For example, the statement that flight is "a circumstance tending to show consciousness of guilt" does not comment on the evidence.[74] Further, the instruction did not indicate a preference for inferring guilt over other permissible inferences because it directed the jury to consider flight evidence "in light of all the facts proven" and that it, the jury, was the sole arbiter of such factual determinations.[75]

Because of its procedural posture, *Cosden* does not control Watson's claim. Its recently drawn conclusions about the wording of flight instructions are nonetheless instructive. Those conclusions are also consistent with this Court's evaluation and affirmation of the same language in *Robertson*.

The flight instruction given in Watson's trial is substantially similar and likewise constitutional. Watson's arguments targeted at the specific wording of the instruction do not warrant a different result

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[74] *Id.* at *4.
[75] *Id.* at *5.

than *Robertson* and the other cases upholding the issuance of flight instructions.

### B. Watson does not provide cause to depart from precedent in this case.

Watson relies on several overlapping arguments to attack the fight instruction given at his trial. He challenges the usefulness of the instruction, the perceptions it allegedly created, and the specific language used.[76] The arguments are unavailing and do not justify a departure from *Robertson*.

Watson contends that the Superior Court's flight instruction was unhelpful and redundant.[77] He describes the factual disputes as simple and the legal issues as undisputed; thus, according to Watson, the generic instructions could have adequately guided the jury without the flight instruction.[78]

The Superior Court's decision to give the flight instruction was appropriate under the law and supported by the evidence. Delaware trial courts may give the instruction if there is evidence of flight and

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[76] *See* Opening Br. 8–15.
[77] Opening Br. 8–10.
[78] Opening Br. 8–10.

that evidence reasonably support an inference that the defendant fled because of a consciousness of guilt.[79] They do not employ a balancing test to judge the relative complexity of the issues presented from case to case. Watson concedes there was evidence of flight and does not claim that consciousness of guilt was an unreasonable inference.[80] Thus, under the established standard, the Superior Court's flight instruction was warranted and appropriately given.

Furthermore, flight instructions are not merely redundant to the generic instructions, even when the parties' disputes are seemingly straightforward. Watson's argument on this point misses the full scope and purpose of a flight instruction. He portrays flight instructions as merely biased for the State's theories of guilt. Yet, the instructions serve, in part, to protect defendants.

Judge Learned Hand observed nearly 80 years ago that "flight is a circumstance from which . . . everyone in daily life inevitably would infer [guilt]."[81] Indeed, flight evidence "has a natural tendency to

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[79] *Robertson*, 41 A.3d at 409.
[80] *See* Opening Br. 9–10 ("At no point did Watson suggest that consciousness of guilt was an impermissible inference . . . .").
[81] *United States v. Heitner*, 149 F.2d 105, 107 (2d Cir. 1945).

establish" consciousness of guilt.[82] The inference is logical, natural, and commonly recognized. Thus, concerns about raising the inference to the level of a rule of law through a jury instruction simply do not exist in the same way they do for other factual issues that may be developing along with social-science research, such as cross-racial identification.[83] In other words, just as Watson argues,[84] the jury can reach the inference on its own. But it does no one any favors to ignore the issue in the charge rather than control it with proper guardrails and limiting instructions. The interests of justice are served, for example, by prohibiting juries from using flight evidence to conclude that a defendant is a bad person and therefore probably committed the crime. By circumscribing the proper purposes for which the flight evidence may be considered, the instruction simultaneously provides an accurate statement of the law and protects

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[82] *Westcoat v. Maryland*, 190 A.2d 544, 545–46 (Md. 1963).
[83] *See Garden v. State*, 815 A.2d 327, 341 (Del. 2003) (explaining that an instruction on cross-racial identifications "implies a degree of certainty that social science rarely achieves"); *see also* Opening Br. 11–12 (attempting to analogize flight instructions to cross-racial-identification instructions).
[84] Opening Br. 9.

criminal defendants. It accomplishes these objectives in a manner that the generic instructions simply do not.

Watson next condemns the perceptions that the flight instruction allegedly created.[85] He first argues that mere act of giving an instruction specially addressing flight evidence, but no instruction specially addressing any other particular piece of evidence, inappropriately highlighted the flight evidence for the jury.[86]

In Delaware, a trial court does not comment on the facts merely by giving a flight instruction.[87] This Court has repeatedly upheld the propriety of flight instructions,[88] and it has never required trial courts to stack their charges with instructions on other pieces of evidence to hide or diminish the importance of the flight evidence.

Watson further argues that the wording of the flight instruction created a perception of judicial bias in favor of the State.[89] He claims that the instruction showcased the possible incriminating inferences (consciousness of guilt and identification) but not the possible

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[85] Opening Br. 10–15.
[86] Opening Br. 10–11.
[87] *Robertson*, 41 A.3d at 409–10.
[88] *Id.* at 409.
[89] Opening Br. 10, 12–13.

innocent inference that he offered (fear).[90] Relatedly, Watson contends that by instructing the jury to consider the flight evidence only for the limited purposes of determining consciousness of guilt and identification, the Superior Court prohibited the jury from adopting an innocent inference.[91]

The Superior Court mentioned the incriminating inferences in the limiting portion of its instruction. As is typically the case, the State, as the bearer of the burden of proof, admitted the flight evidence at trial. It is sensible to delineate the proper purposes of the evidence in terms of how the proponent intends to use it. Indeed, Watson's innocent explanation is relevant only as a rebuttal to the State's theory, not to admit the flight evidence in the first instance.

In *Cosden*, this Court dismissed a similar argument that flight instructions "showcase" or "highlight" guilt over other possible inferences.[92] The argument "is misplaced when the instruction is considered as a whole."[93] As in *Cosden*, the Superior Court here instructed that: (i) flight evidence must be considered in light of the

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[90] Opening Br. 12–13.
[91] Opening Br. 15.
[92] 2024 WL 1848602, at *5.
[93] *Id.*

other facts proven; and (ii) only the jury may determine which inferences to draw from the evidence.[94] With these instructions, the Superior Court "properly reserved issues of fact for the jury."[95]

Watson likewise contends that language used in the instruction—that flight is admissible as a circumstance "tending to show consciousness of guilt"—is not a neutral statement of the law.[96] This Court flatly rejected the same argument in *Cosden*, stating that this language "was not a comment on the evidence."[97] In order to limit the State's evidence to its proper purposes, it must identify those purposes. But when read in the context of the entire flight instruction, the ultimate significance of the flight evidence was still left to the jury's determination. The instruction did not require the jury to reach any particular conclusion or assign any particular weight to the evidence.

For all these reasons, the Superior Court's flight instruction did not run afoul of article IV, § 19.

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[94] *Compare id.*, *with* A91–92.
[95] *See Cosden*, 2024 WL 1848602, at *5.
[96] Opening Br. 13–15.
[97] *Cosden*, 2024 WL 1848602, at *4.

## II. The State presented sufficient evidence that Watson concealed the firearm and therefore committed CCDW.

### Question Presented

Whether the State presented sufficient evidence of concealment for a rational trier of fact to convict Watson of CCDW.

### Scope of Review

When a defendant argues that the evidence was insufficient to support a guilty verdict, this Court reviews the evidence (including all reasonable inferences drawn therefrom) in the light most favorable to the State and asks whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[98] In doing so, this Court does not distinguish between direct and circumstantial evidence.[99] It will not overturn factual findings unless they are clearly erroneous.[100]

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[98] *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).
[99] *Skinner v. State*, 575 A.2d 1108, 1121 (Del. 1990).
[100] *Anderson v. State*, 21 A.3d 52, 57 (Del. 2011).

## Merits of Argument

The State presented sufficient evidence to convict Watson of CCDW. A person commits CCDW when he "carries concealed a deadly weapon upon or about the person without a license to do so."[101] He must act knowingly.[102] The term "deadly weapon" includes firearms.[103] A deadly weapon is "carried . . . upon or about the person" if it is available accessible for that person's immediate use.[104] A deadly weapon is "concealed" if it is "hidden from the ordinary sight of another person—meaning the casual and ordinary observation of another in the normal associations of life."[105]

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[101] 11 *Del. C.* § 1442(a).
[102] *Smith v. State*, 2015 WL 1422427, at *2 (Del. Mar. 26, 2015).
[103] § 222(6).
[104] *Gallman v. State*, 14 A.3d 502, 504–05 (Del. 2011).
[105] *Robertson v. State*, 704 A.2d 267, 268 (Del. 1997) (cleaned up). Citing *Brooks v. State*, 298 A.3d 666 (Del. 2023), Watson claims that this Court provided a different definition of "concealment." Opening Br. 19. But in *Brooks*, this Court was merely quoting a jury instruction as read by the Superior Court as background for discussing a prosecutorial-misconduct claim. *Id.* at *1. The appellant did not challenge the CCDW instruction or the sufficiency of the evidence, and this Court did not have occasion to consider the meaning of "concealment." *See id.* at *1–3. Thus, to the extent Watson draws legal or policy implications from the definition quoted in *Brooks*, those implications are not founded in this Court's precedent.

Officer Crumlish found a black handgun where Watson had thrown a black object.[106] It was the only black object in that area.[107] As Officer Crumlish was pursuing him, Watson slowed down, reached down toward the front of his person, and then presented and threw that black object.[108] Officer Crumlish later determined that Watson did not have a concealed-carry permit.[109] Together, these facts supported the findings that Watson carried a deadly weapon (the recovered firearm) upon his person (where he removed the firearm) without a license. The act of slowing down, reaching for the firearm, and tossing it demonstrated that Watson acted knowingly.

There was also sufficient evidence of the final element, concealment. Officer Crumlish observed Watson as he exited the vehicle and while he fled on foot.[110] The act of fleeing evidenced a consciousness of guilt, an awareness that he was concealing a firearm in violation of the law. Officer Crumlish did not see a firearm until Watson produced the black object from the front of his person to

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[106] A50–52.
[107] A51.
[108] A47; A51.
[109] *See* A53.
[110] A46–47; A50–51; A54.

throw it over the fence.[111] Although Officer Crumlish observed Watson from a rear vantage point during the pursuit, he first saw Watson from the side as he exited the vehicle.[112] This perspective would have allowed Officer Crumlish to view some portion of Watson's front; yet, he still did not observe a firearm. It was therefore rational for the jury to infer that the firearm was knowingly concealed when Watson carried it on the front of his person.

Watson disagrees, claiming the evidence was insufficient to prove that he knowingly concealed the firearm.[113] According to Watson, Officer Crumlish, "who was behind Watson," could not "know[] anything about where or how [the firearm] was being carried on the front of Watson's body."[114] He argues that other vantage points must be considered as a matter of law and to protect the right to open carry.[115]

Watson is correct that no single vantage point of a particular officer at a particular point in time can prove or disprove concealment.

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[111] *See* A50.
[112] A54.
[113] Opening Br. 18–19.
[114] Opening Br. 18–19.
[115] Opening Br. 21.

In one case, an officer with a fortunate vantage point may be able to see a weapon that is otherwise concealed.[116] In another case, he may be unable to see a firearm that is carried in plain sight at a different perspective.[117] The inquiry is more holistic, asking whether the weapon is hidden from the casual and ordinary observation of another person in the normal associations of life.[118]

Watson's argument instead fails in its application. It relies on the premise that Officer Crumlish observed Watson from only one vantage point—behind him—and that Watson's front was therefore blocked from his view. But the evidence presented at trial established that Officer Crumlish observed Watson from multiple vantage points—from both the side and rear—giving him the opportunity to observe Watson's front from at least some acute angle. From either vantage point, Officer Crumlish did not see Watson carrying a firearm—not until Watson slowed down and reached down toward the front of his person to retrieve one.

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[116] *Florida v. Marsh*, 138 So.3d 1087, 1090–91 (Fla. Dist. Ct. App. 2014).
[117] *Dorelus v. Florida*, 747 So.2d 368, 372 (Fla. 2000).
[118] *Robertson*, 704 A.2d at 268.

To combat the inference of concealment, Watson suggests hypothetical ways in which he might have open carried the firearm without Officer Crumlish seeing it. He posits that the firearm "could have been openly displayed in his hand or in a fully visible holster."[119] Neither hypothetical stands up to the evidence presented at trial.

The notion that Watson was open carrying the firearm in his hand is not consistent with the State's evidence. Officer Crumlish observed Watson exit the vehicle and flee on foot. He did not observe a firearm in Watson's hand until Watson slowed and reached down toward the front of his person to retrieve it.

The State's evidence also disproves the holster hypothetical. If Watson was openly wearing a holster on the front of his person, it would have protruded and been visible from the side when he exited the vehicle. More importantly, Officer Crumlish's body-worn-camera footage was admitted into evidence and played for the jury.[120] The footage showed that Watson was wearing a puffy black coat, black pants, and no holster.

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[119] Opening Br. 20–21.
[120] A49.

The rational inference, therefore, is that Watson concealed the firearm in his pants or under his jacket. Of course, only the fact of concealment, and not the precise manner of it, is an element of CCDW. Accordingly, there was sufficient evidence for the jury to find the concealment element and convict Watson of CCDW.[121]

[121] *Cf. Jean-Marie v. Florida*, 947 So.2d 484 (Fla. Dist. Ct. App. 2006) (finding sufficient evidence to prove the CCDW under similar facts); *Michigan v. Snead*, 2000 WL 33421442 (Mich. Ct. App. May 2, 2000) (same).

## CONCLUSION

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

Respectfully submitted,

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Dated: October 30, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|---|---|
| HAKEEM WATSON,<br><br>Defendant Below,<br>Appellant,<br><br>v.<br><br>STATE OF DELAWARE,<br><br>Plaintiff Below,<br>Appellee. | No. 181, 2024<br><br>On appeal from the Superior Court of the State of Delaware |

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

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

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 4,858 words, which were counted by Microsoft Word.

Dated: October 30, 2024

*/s/ Matthew C. Bloom*
Matthew C. Bloom (#5867)