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Case Number 228,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

AL-GHANIYY PRICE,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 228, 2024
	)	
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: September 27, 2024

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NATURE AND STAGE OF THE PROCEEDINGS

Al-Ghaniyy Price, ("Price"), was indicted on five counts of drug dealing and one count of possession of drug paraphernalia.[1] On August 25, 2023, defense counsel filed a Motion to Suppress all of the drug evidence in this case as the result of the unlawful seizure of Price by five police officers.[2] The State responded on October 12, 2023[3] and a hearing was conducted on October 20, 2023.[4] The trial court subsequently denied the motion.[5]

On January 30, 2024, Price proceeded to a 2-day jury trial. He was found guilty of Drug Dealing Heroin, Possession of Heroin, Possession of Cocaine, Possession of Marijuana, and Possession of Drug Paraphernaila.[6] The two heroin convictions merged for sentencing and the judge sentenced Price to 10 years in prison followed by probation on these offenses.[7]

This is Price's Opening Brief in support of a timely-filed appeal.

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[1] A1,7-9.
[2] A10.
[3] A20.
[4] A3.
[5] October 20, 2023 Oral Decision Denying Motion, Ex. A; October 20, 2023 Written Decision Denying Motion, Ex. B
[6] A5.
[7] June 11, 2024 Sentence Order, Ex C.

SUMMARY OF THE ARGUMENT

1. Because police lacked objective and specific facts linking Price or the Jeep Grand Cherokee he occupied to any possible criminal activity when five officers seized him, the trial court erred when it refused to suppress evidence obtained as a result of that seizure.

STATEMENT OF FACTS

On December 27, 2022, at approximately 2:20 a.m., New Castle County Police were dispatched to Blue Spruce Drive[8] in response to a 911 caller reporting a "suspicious vehicle" in the neighborhood not known as a high crime area.[9] The 911 caller claimed that that an unknown black male had been sitting in a white Jeep Grand Cherokee, ("Jeep"), with the engine running for over an hour. The caller described the occupant and his clothing.

While he provided speculation, the caller gave no specifics about why the driver was suspicious.[10] Nor did he provide any information regarding the diver's conduct, aside from sitting in the vehicle. In fact, he stated more than once that he did not know what the occupant was doing. He also stated that there were no weapons involved and that he was not in danger.[11] The caller did note that he had seen the same person and vehicle in that spot a week earlier and that he had called police who did not arrive in time to investigate.[12]

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[8] A38.
[9] A38.
[10] 911 Call, attached to State's Response to Motion to Suppress as Exhibit A and introduced into Evidence at Suppression Hearing as Exhibit #1, ("911 Call") at 00:48, 02:43. According to the Clerk of this Court, the exhibits attached to the State's Response to Motion to Suppress are contained in the file with this Court.
[11] 911 Call at 00:48; 01:39; 02:43.
[12] 911 Call at 00:50.

This fact was not passed along to police who subsequently followed up on this complaint.

Prior to 2:22:00 a.m., five uniformed officers with firearms arrived on scene in three marked police SUVs.[13] The officers parked one SUV directly behind a white Jeep Cherokee in which Al-Ghaniyy Price, ("Price"), was sitting. The other two SUVs parked in front of and facing the Jeep; one directly in front of the Jeep and the other on the opposite side of the residential street.[14] The headlights of all the police vehicles remained activated and focused on the Jeep.

One of the SUVs in front contained Officers Webb and Ivory. The other contained Officer Bochanski. The SUV behind the Jeep contained Officers Bolden and Montan.[15] All officers except Bolden immediately got out of their respective vehicles and walked toward the Jeep. Officer Webb testified that the purpose for the investigation was "to see if the

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[13] Exhibit B attached to the State's Response to Motion to Suppress was also introduced into evidence at the suppression hearing as Exhibit #2. This particular exhibit contains clips from three different Body Worn Cameras. They are identified as follows: VTS_01_01.VOB, Bochanski, at 2:22:19 a.m. (hereinafter, "Bochanski, at _"); VTS_02_1. VOB, Webb, at 2:22:12 a.m. (hereinafter, "Webb, at ___"); VTS_03_1.VOB, Ivory, at 2:21:56 a.m. (hereinafter, "Ivory, at __"). According to the Clerk of this Court, the exhibits attached to the State's Response to Motion to Suppress are contained in the file with this Court. A38.

[14] A38-39.

[15] A38.

vehicle did come back to the neighborhood or was a resident, we didn't know the status of the occupant." [16] He testified that, in his "experience, we've also had similar situations where occupants were engaged in theft of vehicles in the area, or even burglary."[17]

At 2:22:06 a.m., Officer Montan shined her flashlight from behind the Jeep into the rear window through the front windshield. She continued to shine her flashlight into the back and side of the vehicle as she began to walk up the passenger side.[18] Officer Bolden remained inside his SUV. Meanwhile, the three other officers continued to approach Price from the front. Officer Ivory headed toward the Jeep from the front and further out on the passenger side. By 2:22:12 a.m., Officer Webb, walking toward the front driver's side, was close enough that his shadow was cast on the Jeep from his own vehicle's headlights.[19] Officer Bochanski was behind Webb.

At 2:22:18 a.m., as body worn camera, (BWC), videos reveal and Webb's testimony confirms, Officer Montan was standing right next to the Jeep on the passenger side. It was at that time that Price opened the driver's

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[16] A39.
[17] A39.
[18] Ivory, at 2:22:06 a.m.
[19] Webb, at 2:22:12 a.m.

door slightly then, within seconds, he closed it. Webb was standing close enough to the Jeep that, as the trial court found, he saw a small item fall from the bottom of the driver's door on to the curb.[20] Bochanski continued to walk behind Webb around to the driver's door.[21]

Unfortunately, due to the sound delay on the officers' BWC videos, there is no sound attached to any of the videos until 2:22:25 a.m.[22] However, Webb testified that, prior to 2:22:18 a.m., the officers had made no commands but had "asked" Price to roll his windows down.[23] Once the sound was activated, recordings capture multiple officers loudly demanding that Price, "roll all [his] windows down."[24] He, instead, began to move the Jeep slightly forward.[25] Multiple officers immediately ordered him to "Stop!"[26] He did so.[27]

After the car stopped, Webb again ordered Price to roll his windows down.[28] Bochanski approached the driver's window and began to interact with Price. He told the officer, "You guys scared me." He also accurately

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[20] Ivory, at 2:22:18 a.m.; Bochanski, at 2:22:18 a.m.; A47.
[21] Bochanski, at 2:22:18a.m.
[22] Ivory, 2:22:25 a.m.; Bochanski, at 2:22:28 a.m.; Webb, at 2:22:40 a.m.
[23] A47.
[24] Ivory, at 2:22:28 a.m.; Bochanski, at 2:22:28 a.m.
[25] Ivory, at 2:22:31 a.m.
[26] Ivory, at 2:22:32 a.m.; Bochanski, at 2:22:28 a.m.
[27] Ivory, at 2:22:34a.m.; Bochanski, at 2:22:28a.m.
[28] Ivory, at 2:22:35 a.m.; Bochanski, at 2:22:35 a.m.

explained that he was sitting in front of his own residence.[29] Both Webb's and Ivory's BWC videos reveal that at 2:22:40 a.m. and 2:22:50 a.m. Webb looked down at the ground where the little object had fallen. [30] It was at 2:22:55 a.m. that Webb instructed Bochanski to arrest Price.[31] When she apparently did not hear him, Webb took Price into custody himself.

After Price was taken out of the Jeep, he was immediately handcuffed and put into a police vehicle. Officers alleged that the item that fell on the ground was, indeed, a bundle of heroin.[32] They searched Price and the Jeep and found additional contraband which is the basis of the charges in this case.

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[29] A44.
[30] Ivory, at 2:22:50 a.m.; Webb, at 2:22:55 a.m.
[31] Ivory, at 2:22:55 a.m.; Bochanski, at 2:22:55 a.m.
[32] A44-45.

I. BECAUSE POLICE LACKED OBJECTIVE AND SPECIFIC FACTS LINKING PRICE OR THE JEEP GRAND CHEROKEE HE OCCUPIED TO ANY POSSIBLE CRIMINAL ACTIVITY WHEN FIVE OFFICERS SEIZED HIM, THE TRIAL COURT ERRED WHEN IT REFUSED TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF THAT SEIZURE.

Question Presented

Whether an occupant of a parked vehicle is seized when three marked police SUVs surround him and focus their activated headlights on him from the front and the back, then four uniformed officers with firearms approach on foot while at least one officer shines a light directly into his vehicle and whether that seizure is justified by a 911 caller's subjective belief that a vehicle is suspicious.[33]

Standard And Scope Of Review

When reviewing a denial of a motion to suppress evidence, this Court reviews the trial court's legal conclusions *de novo*. When reviewing the trial court's factual findings, this Court determines whether the trial court abused its discretion in deciding whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.[34]

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[33] A10.

[34] *See Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008).

Argument

An individual's right to be free of unlawful searches and seizures in Delaware is secured by two constitutional provisions. First, "[t]he Fourth Amendment to the United States Constitution guarantees to individuals the right to be 'secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' [And, second,] Article I, § 6 of the Delaware Constitution guarantees that the people of the State of Delaware 'shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures.'" [35] In addition, under 11 Del. C. § 1902 (a), "[a] peace officer may stop a person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination." A peace officer must have reasonable, articulable suspicion of criminal activity in order to stop and detain an individual.[36] Reasonable and articulable suspicion has been defined as an "officer's ability to 'point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably

[35] *Jones v. State*, 745 A.2d 856, 860 (Del. 1999) (quoting U.S. Const. amend. IV; Del. Const. art. I, § 6).
[36] *Terry v. Ohio*, 392 U.S. 1 (1968); §1902(a).

warrant th[e] intrusion.'"[37] A determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances.[38]

1. Five uniformed officers with firearms seized Price as soon as they arrived on scene, surrounded him with three marked police SUVs, began to approach him on foot and shined a flashlight in his Jeep.

Before this Court can decide whether Price was unlawfully seized, it must first determine when the seizure actually occurred. [39] Under the Fourth Amendment, a seizure requires "either physical force ... *or,* where that is absent, *submission* to the assertion of authority."[40] However, pursuant to Article I, § 6 of the Delaware Constitution, an individual is seized whenever the police have engaged in "conduct that would communicate to a reasonable person that he or she was not free to ignore the police presence."[41]

Here, the trial court erroneously held that a seizure "did not happen until after Corporal Webb had noted the dropping of the heroin, and that in fact it was heroin. The earliest that could have been was [] 2:22:28 [a.m.]

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[37] *Jones*, 745 A.2d at 861.
[38] *Id.*
[39] See *Moore v. State*, 997 A.2d 656, 663–64 (Del. 2010).
[40] *California v. Hodari D.,* 499 U.S. 621, 626 (1991). See *Jones*, 745 A.2d at 862.
[41] *Jones*, 745 A.2d at 869. See *State v. Rollins,* 922 A.2d 379, 383 (Del. 2007) (quoting *Purnell v. State,* 832 A.2d 714, 719(Del. 2003)) (internal quotation marks omitted))

when there is some command about rolling down windows[.]"[42] This holding was ostensibly based on principles of Delaware's constitution. However, those principles as articulated by the court were distorted:

> So the Court finds that, first of all, as far as any seizure itself for the purposes of *Jones*[*v. State*], and I'm well familiar with the standards of *Jones* and what, you know, the courts, the fact that a seizure under Article I, Section 6 of the Delaware Constitution notes that a seizure happens when one, in shorthand, cannot basically resist the police officer's presence, or will have to respond to the police officers when they have shown enough control over the circumstances, and given commands such that one would not believe that they have, you know, can ignore that presence and ignore the intrusion[.][43]

Ironically, the trial court's definition of a "seizure" for purposes of our state constitution is more akin to that in *California v. Hodari D.*[44] which this Court concluded in *Jones* did not provide enough protection to Delaware citizens. Instead, *Jones* departed from *Hodari D.*'s "physical force"/"submission to authority" requirement and concluded that, in Delaware, citizens have more protection. Police must have justification any time they engage in "conduct that would communicate to a reasonable person that he or she was not free to ignore the police presence." To

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[42] A56.
[43] A56.
[44] 499 U.S. 621.

ignore police presence is simply "to refuse to take notice of" police presence. [45]

Police are permitted to approach an individual to ask a question and the encounter is not a seizure if the "individual has a right to ignore the police and go about his business."[46] Any refusal on his part, however, does not provide objective grounds for further detention.[47]

Under the trial court's version of *Jones*, there is no seizure until the individual "cannot resist (i.e. 'exert force in opposition to')[48] the police officer's presence;" must "respond to the police officers when they have shown enough control;" or cannot ignore "commands" given by the officers. All of these scenarios involve either physical force, restraint or verbal commands. These are precisely the limitations in *Hodari D.* from which this Court expanded protection for Delaware citizens.

Even if the trial court's articulated standard could be interpreted consistent with the principles of the Delaware Constitution, the trial

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[45] Ignore Definition & Meaning - Merriam-Webster (last visited 09/25/2024).
[46] *Royer,* 460 U.S. at 498. *Williams v. State*, 962 A.2d at 215–16; *Illinois v. Wardlow,* 528 U.S. at 125 (noting that an individual "has a right to ignore the police and go about his business" without that activity being deemed inherently).
[47] *Royer,* 460 U.S. at 498; *Florida v. Bostick,* 501 U.S. 429, 437 (1991).
[48] Resist Definition & Meaning - Merriam-Webster (last visited 09/25/2024).

court's ultimate holding reflects a decision in violation of the state constitution.

> But at [2:]22:18 [a.m.], so still before anybody is actually even at, close enough to the vehicle to give any type of command, and there is no listening to what we can of the audio, there seems to have been no command given at that point, they're all kind of coming up to the vehicle to address the concerned citizen's call." [49]

> [t]he mere approach by the police officers and the way they did at that time of the morning in those circumstances the Court does not find rises to a seizure under *Jones*, it is a product of the way the police officers happened to be responding that day and were assigned that day, that there happened to be two police officers in each car because of the FTO situation. But the fact that the police officers were parked very far away, that they were approaching on foot, the fact they had flashlights does not give, you know, any greater weight to it being a seizure, you know, it is that circumstance.[50]

Here, as soon as three marked police SUVs parked in front of and behind the Jeep on a residential street and trained their headlights on the Jeep, (prior to 2:22:06 a.m.), a reasonable person would not feel free to ignore police presence. While the trial court concluded that the SUV's were "far away," a review of the videos reveals that a reasonable person would find that the SUVs were positioned so as to prevent Price from

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[49] A54.
[50] A56.

driving away.[51] A reasonable person would not feel free to pull forward with two sets of headlights in his eyes, drive between the two police SUVs and negotiate three armed officers who are approaching the vehicle. Similarly, a reasonable person in that situation would not feel free to turn around to go in the other direction with armed officers approaching on foot and a police SUV behind him with its headlights on.

By 2:22:06 a.m., Officer Montan already had her flashlight on and shining directly into the rear window of the Jeep through the front windshield. And, at 2:22:18 a.m., the moment Price opened his driver's door slightly and purportedly dropped the heroin outside, Montan was right next to the Jeep on the passenger's side still shining her flashlight into the Jeep.[52] Further, Webb testified that he actually noticed the object fall out of the car. Thus, at 2:22:18 a.m., he was standing close enough to the car that he could see a dime sized (in width and height at least) object fall out the bottom of the door by the curb to ground in the dark.

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[51] *Riley v. State*, 892 A.2d 370, 374 (Del. 2006)("when police approached the Escort with their badges and flashlights, after having parked their police vehicle behind the Escort so as to prevent it from driving away, a seizure had taken place for purposes of Fourth Amendment analysis."); *Compare Harris v. State*, 12 A.3d 1154 (Del. 2011) (finding consensual encounter when officer noticed defendant in parked car in lot, pulled into lot, did not block defendant from leaving, and defendant was free to leave anytime before officer parked his car).

[52] Ivory, at 2:22:18 a.m.; Bochanski, at 2:22:18 a.m.

Accordingly, before Price dropped that item, and before Webb identified it, Price had been seized.

Not only was the trial court's conclusion that the earliest the seizure could have occurred was at 2:22:28 a.m. because that is "when there is some command about rolling down windows"[53] erroneous as a matter of law, it was premised on clearly erroneous factual findings. In pronouncing its decision, the trial court stated, that in "listening to what we can of the audio, there seems to have been no command given at that point[.]" A review of the videos reveals that the earliest there is any sound available is on Ivory's BWC video which is at 2:22:25 a.m.[54] Thus, listening to the audio provides no insight into whether commands were mad prior to 2:22:18 a.m.

Also, the court's finding that at 2:22:18 a.m., nobody has "gotten even close enough to the vehicle to really make any types of commands"[55] is undercut by both the body worn camera video and Webb's testimony confirm that one officer is standing just outside the passenger side of the Jeep at 2:22:18 a.m.[56] This finding is also inconsistent with Webb's

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[53] A56.
[54] Ivory, at 2:22:25 a.m.; Bochanski, at 2:22:28 a.m.; Webb, at 2:22:40 a.m.
[55] A55.
[56] Ivory, at 2:22:18.

recollection that prior to 2:22:18 a.m. police were close enough to "ask" Price to roll down his windows.[57]

In *United States v. Mendenhall*,[58] the United States Supreme Court explained that, under a Fourth Amendment analysis, one factor to assess when determing whether there has been a seizure is the presence of several officers. Here, there were 5 uniformed officers with firearms and three marked police SUVs surrounding the Jeep. This can be threatening to a reasonable person. Rather than factoring that in to the analysis in this case, the trial court simply explained the innocuous reason for it- training. However, the reason for the presence of the number of officers is not a relevant factor.

The trial court also erroneously found that the use of flashlights played no role in the calculus.[59] However, as used by Officer Montan in this case, the flashlight was used as an intrusive tool as early as 2:22:06 a.m. communicating that Price was not free to ignore the police. [60] She

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[57] A47. Court: Corporal Webb, prior to the door first coming open, had any police officer given him any command to do anything yet, had they gotten to that point?
Webb: I think we had asked him to roll down the window, 10 but there were no commands issued.

[58] 446 U.S. 544, 554 (1980).

[59] A55-56.

[60] *Riley v. State*, 892 A.2d 370, 374 (Del. 2006) (concluding when plain clothes officers "approached the [defendant's vehicle] with their badges and

continued to use it to keep peering into the Jeep up through 2:22:18 a.m. and beyond. Thus, the flashlight, at least in that case, was used for more than simple assistance.

Accordingly, Price was seized prior to the heroin being dropped out of the door on to the curb.

2. The 911 Caller Provided No Reasonable Articulable Suspicion That Either Price Or The Jeep Grand Cherokee May Have Been Engaged In Or Was About To Engage In Any Criminal Activity.

The Delaware Supreme Court has held that "reasonable grounds" as used in §1902(a) has the same meaning as reasonable and articulable suspicion.[61] A determination as to reasonable, articulable suspicion must be evaluated in the context of the totality of the circumstances.[62] Under this test, an officer must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion."[63] The police were only permitted to seize Price if they possessed reasonable articulable suspicion that criminal activity was

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flashlights, after having parked their [unmarked] police vehicle behind the [vehicle] so as to prevent it from driving away, a seizure had taken place for purposes of Fourth Amendment analysis."). *See, e.g.*, *Hall v. State*, 981 A.2d 1106, 1111 (Del. 2009) (finding a seizure when a detective parked car behind suspect and blocked him in, then approached the car and gave an order).

[61] *Jones*, 745 A.2d at 861.

[62] See *United States v. Cortez*, 449 U.S. 411, 417-418 (1981).

[63] *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989) (quoting *Terry*, 392 U.S. at 21).

afoot and that Price and/or the Jeep was involved.[64] The 911 caller's generalized and subjective suspicions, without more, fail to provide the particularized reasonable suspicion necessary for a lawful seizure.[65]

The officers seized Price in response to 911 caller reporting a "suspicious vehicle" in the neighborhood not known as a high crime area.[66] He claimed that that an unknown black male had been sitting in a white Jeep with the engine running for over an hour. The caller described the vehicle, described the person in the vehicle, and gave the license plate number. He provided no further information about the occupant's conduct. He did not explain how he saw the driver's clothing and physical description, or whether the driver had been at a house nearby.

He did say he did not feel safe but gave no specifics.[67] Rather, he provided his own speculation as to what the individual might be doing. Then, he stated more than once that he did not know what the occupant was doing. He also stated that there were no weapons involved and that he was not in danger.[68] The caller did note that he had seen the same person and vehicle in that spot a week earlier and that he had called police who did not arrive in

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[64] *Jones*, 745 A.2d at 860.
[65] *Id.* at 871.
[66] A38.
[67] 911 Call at 00:48, 02:43.
[68] 911 Call at 00:48; 01:39; 02:43.

time to investigate.[69] This fact was not passed along to police who subsequently followed up on the complaint.

Webb explained that the purpose for going to the scene was "to see if the vehicle did come back to the neighborhood or was a resident, we didn't know the status of the occupant."[70] He then said that, after receiving the report, he was suspicious because, there have been "similar situations where occupants were engaged in theft of vehicles in the area, or even burglary."[71]

Police never cited to any objective factors linking either Price or the Jeep to any possible criminal activity. In fact, Webb testified that he had no information linking the car or the driver to any criminal activity when they went to investigate the "suspicious vehicle." Stated differently, when police arrived on scene and seized Price, they relied on nothing more than "an inchoate and unparticularized suspicion or hunch[.]"[72]

While the trial court's main decision rested on a conclusion that Price was not seized until after police had a basis to arrest him for the possession of drugs, it issued a "back up" decision that:

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[69] 911 Call at 00:50.
[70] A38.
[71] A38.
[72] *Alabama v. White*, 496 U.S. 325 (1990).

> based on the 911 call, the facts that were known to Corporal Webb, what he had in his experience and his concern at that time, that there could have been a more intrusive stop or seizure from the time the police first noticed the vehicle.[73]

Glaringly, the decision does not find that Webb had reasonable suspicion of any criminal activity to seize Price as a result of the 911 call. Rather, it asserts that the officer's "experience and his concerns at that time" would have justified a more intrusive stop. The court did not identify what details from the 911 call provided Webb with reasonable specific and articulable suspicion that criminal activity was afoot and that either Price and/or the Jeep was linked to that activity.

Therefore, officers did not have the reasonable articulable suspicion required to seize Price. Thus, the seizure was unlawful.

3. The trial court clearly erred when it relied on a parking violation to uphold the unlawful seizure.

"In apparent recognition of Officer [Webb]'s problematic suspicion of" criminal activity, the prosecutor and the trial court relied on facts unrelated to the basis of the officers' initial investigation, stop and subsequent search- the purportedly illegally parked car.[74] Contrary to the

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[73] A56.

[74] See *McDougal v. State*, 314 A.3d 1077, 1089–90 (Del. 2024) (In apparent recognition of Officer Moses's problematic suspicion of a loitering violation, the Superior Court relied on facts seemingly unrelated to Officer Moses's

trial court's conclusion, that there was an apparent parking violation also present did not absolve police of its seizure of Price without reasonable suspicion or probable cause.

The body worn camera videos reveal that, at no time while police were on the scene, were they in any way concerned about the parking violation. They certainly were not called to the scene for a parking violation. Nor is there anything in the record that a parking violation was ever considered by police as a factor when deciding whether to approach Price.

It was at the suppression hearing that the prosecutor asked the officer whether it looked like the Jeep was parked lawfully. The officer responded that it did not appear to be lawfully parkedOn cross examination, the officer acknowledged that he generally would only charge someone for that offense if there had been an accident. In this respect, our case is similar to that of *Reed v. State*.[75]

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loitering rationale. Specifically, the court pointed to the weeks-old tip from the confidential informant, McDougal's "baggy" clothing, and the fact that neither Acklin or Coleman lived in the area of 24th and Carter Streets. These additional facts, viewed separately or together, do not create a reasonable ground to suspect that McDougal had committed or was about to commit a crime.)

[75] 89 A.3d 477 (Del. 2014).

In *Reed*, two officers, responding to an anonymous report at night of a "suspicious vehicle," "arrived at the specified location" and "saw a car idling in an alleyway." There, one officer approached the driver's side while the other approached the passenger's side. While events led to a concededly unlawful pat down, the judge subsequently concluded that the defendant had committed an arrestable motor vehicle offense, and the police would have had safety reasons to lawfully pat him down. On appeal, however, this Court concluded that the trial court was clearly erroneous in relying on the premise that Reed was going to be arrested for a traffic offense. This was particularly so after the officer had testified that the "standard procedure in dealing with a driver whose license is suspended is to issue a summons and, either let the driver leave, or park the car and have someone come to pick up the unlicensed driver. He specifically stated that the standard practice is not to arrest the driver." [76]

Here, Webb's testimony made it clear that his standard practice was not to cite individuals for parking on the wrong side of the road. So, similar to the trial court in *Reed*, the trial court in our case was clearly erroneous in relying on the premise that police could have arrested Price for a parking violation.

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[76] *Reed v. State*, 89 A.3d 477 (Del. 2014).

4. The Exclusionary Rule dictates the items seized from Price and the Jeep following his unlawful seizure must be suppressed.

The Delaware Supreme Court has stated: "The exclusionary rule acts as a remedy for a violation of a defendant's right to be free of illegal searches and seizures. It provides for the exclusion from trial of any evidence recovered or derived from an illegal search and seizure."[77] The officers in this case did not have reasonable suspicion to believe that Price had committed or was committing a crime. Therefore, there was no lawful reason to seize Price. The evidence recovered as a result of the illegal seizure should have been suppressed. His convictions must now be reversed.

[77] *Jones*, 745 A.2d at 872 (citing *Mapp v. Ohio*, 367 U.S. 643 (1961); *Wong Sun v. United States*, 371 U.S. 47 (1963)).

CONCLUSION

For the reasons and upon the authorities cited herein, Price's convictions must be vacated.

Respectfully submitted,

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DATED: September 27, 2024