



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARTEZZ FINNEY,)	
)	
Defendant Below,)	
Appellant,)	
)	No. 282, 2024
v.)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff Below,)	
Appellee.)	

APPELLANT'S REPLY BRIEF

**ON APPEAL FROM THE SUPERIOR COURT
IN AND OF NEW CASTLE COUNTY**

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DATE: March 14, 2025

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I. BECAUSE POLICE STOPPED FINNEY WITHOUT REASONABLE ARTICULABLE SUSPICION AND CONDUCTED AN UNLAWFUL INVENTORY SEARCH, ANY AND ALL EVIDENCE SEIZED MUST BE SUPPRESSED

The State contends that Finney waived his right to challenge suppression because he did not fairly present his questions to the Superior Court. Ans. Br. at 10. In particular, the State takes issue that the arguments below and before this Court are not mirror images of one another. Although Finney takes a different angle on appeal, “[t]he motion to suppress, standing alone, preserved the issue on appeal.” *Gregory v. State*, 616 A.2d 1198, 1200–01 (Del. 1992).

The issue of the unlawful detention also arose during oral argument at the suppression hearing when defense counsel argued that notwithstanding any statements, elicited or unsolicited, the officer’s actions of immediately drawing their weapons and detaining Finney was premature and unlawful. When asked by the Court, counsel made clear that absent any statements, police would not have been permitted to search the vehicle when there was a real possibility that they were mistaken Finney had a firearm in his hand rather than a cell phone. A36-37. For what it’s worth, trial counsel believed that she appropriately acted to preserve the trial issues that provide the basis for appellate review here. Even if trial counsel did not raise the exact arguments below, the issues of suppression of

statements and evidence during an unlawful search and seizure are so intertwined that the issue was nevertheless preserved.

Assuming *arguendo* that the issues are reviewed for plain error, Finney's immediate detention and arrest before police developed the necessary facts to find reasonable and articulable suspicion requires reversal in the interest of justice. Supr. Ct. R. 8. The State contends that Finney waived his right to challenge the Superior Court's factual findings on appeal because "[h]e asked the [] Court to decide the motion on the papers[.]" Ans. Br. at 18. This reasoning does nothing more than reveal the State's misapprehension of the basic legal principle that 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. *Lopez-Vazquez v. State*, 956 A.2d 1280, 1291 (Del. 2008).

Here, the factual dispute in which the case rests on is what information did the officers have when they swarmed Finney's Chevy Malibu with their weapons drawn. Equally important is the timeline of events. The record does not support the trial court's findings that SPO Phelps "immediately recognized the driver as Artezz Finney" prior to drawing their weapons and approaching the vehicle. A57. Moreover, the record does not support that "a large crowd of people" gathered at

the scene which forced police to transport the Malibu for an “inventory search” due to safety reasons. A58.

The body-worn camera is the best evidence and speaks for itself. At two minutes and one second, Det. Rosembert activates the audio of his body camera to radio “person with a gun”. It should be noted from the video that police approached the Malibu from behind and it had a deeply tinted rear windshield. At that moment the officers immediately exit the vehicle, surround the Malibu with weapons drawn, pointing them towards the vehicle. A few seconds later you can hear one of the officers shout out “Hands up, don’t reach. Artezz I will shoot you”. The body camera footage shows Finney inside the vehicle holding a cellphone. This prompts police at two minutes and twenty-four seconds to ask Finney “where is the gun?” The officers announce “let’s go” at three minutes and forty-four seconds and quickly exit the area with Finney and his Malibu. However, at that moment no crowd had gathered.

These series of live events establish that at the moment police stopped their unmarked vehicle and swarmed the Malibu with guns drawn, officers did not know who the black male occupant was. Although the subject was quickly identified as Finney, the officers jumped the gun, so to speak, when they moved immediately to arrest an individual for possible mere possession of a firearm, before developing

the facts necessary to draw an inference of criminal activity and/or a belief that there was a risk of death or serious physical injury.

Lastly, the State properly concedes that the trial court and the prosecutor described the vehicle search as an inventory search. Ans. Br. at 27. Now, the State wants to move away from that classification because it suits its argument on appeal. In its answering brief, the State never attempts to respond to Finney's challenge in his opening brief that the inventory search was not conducted in accordance with standard police regulations and procedure for the legitimate purpose of inventorying the car's contents prior to its being towed away. Op. Br. at 8. Here, law enforcement officers violated WPD written directive and relevant policy when they conducted the unlawful search. *Sharp v. State*, 2024 WL 5114143, *2 (Del. Dec. 16, 2024). Although substantial compliance, not perfect compliance, is required, here there were several deviations. For example, (1) Det. Rosembert was not permitted to impound Finney's vehicle after failing to offer alternative arrangements; (2) the vehicle did not create a hazard or interfere with the normal movement of traffic; (3) the purpose of the search was to find evidence rather than provide a caretaking function.

Finney's detention and subsequent arrest violated the well-worn tenets of the United States Constitution against unlawful search and seizure. Consequently, all evidence obtained as a result of the unlawful seizure should have been suppressed.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Artezz Finney's convictions should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: March 12, 2025