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Case Number 489,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN SWANSON,	)	
	)	
Defendant Below,	)	
Appellant,	)	No. 489, 2024
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On January 2, 2024, a grand jury indicted Marvin Swanson ("Swanson") for Possession of a Firearm by a Person Prohibited ("PFBPP") and Possession of Ammunition by a Person Prohibited ("PABPP"). (A1; A7-8).

On April 12, 2024, Swanson filed a Motion to Suppress.[1] (A2; A9-18). That motion sought to suppress: (1) DNA from a sample taken by police; and (2) admissions made by Swanson while at the police station. (A16). On May 22, 2024, the State responded to the motion. (A2; A20-40). On June 7, 2024, Swanson replied. (A2; A41-44).

Also on June 7, 2024, the Superior Court heard argument on the motion and reserved its decision. (A2; A45-131; A122). On July 19, 2024, the court issued a written decision denying the motion.[2] (Opening Br. Ex. A).

On July 29, 2024, the court held a status conference, during which the parties addressed jury *voir dire*. (A3). The jury was selected on August 6, 2024, and it returned a guilty verdict on both counts on August 7, 2024. (A3-4).

On November 11, 2024, the court sentenced Swanson to five years incarceration followed by probation. (A4; Opening Br. Ex. B).

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[1] Concurrently with his Motion to Suppress, Swanson filed a Motion to File his Motion to Suppress Out of Time, which the Superior Court granted. (A1-2).
[2] *State v. Swanson*, 2023 WL 11876797 (Del. Super. July 19, 2024).

Swanson filed a timely notice of appeal and an opening brief. This is the State's answering brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court correctly determined police possessed reasonable articulable suspicion to stop and detain Swanson based on a social media video and a tip from a confidential informant, which officers corroborated. The court likewise correctly determined Swanson's transport to the WPD station was not a *de facto* arrest. It was minimally intrusive and reasonably related to WPD's firearm investigation. Even if it were a *de facto* arrest, police had probable cause to arrest Swanson when they transported him to the station.

II. Appellant's argument is denied. Swanson's argument relies on a single case distinguishable on its facts and which does not establish a ruling requiring trial courts ask all juries whether they have been the victim of a crime. If the case Swanson cites creates any rule regarding *voir dire*, it is only that trial courts should inquire as to bias towards the State, which the Superior Court did here. And Swanson's argument here would be inconsistent with other precedent of this Court.

STATEMENT OF FACTS

In August 2023, Wilmington Police Department ("WPD") Detective Anthony Lerro ("Det. Lerro") was assigned to the crime, gun, and intelligence unit. (A49). In connection with that assignment, on August 22, 2023, Det. Lerro was conducting routine surveillance on Instagram. (A51). Part of Det. Lerro's investigative technique includes a fake account used for police investigations through which he reviews the profiles, stories, live videos, and other posts of people that account follows on the platform. (A52).

Swanson was one such person. (A52). Det. Lerro was already familiar with Swanson prior to that date, having had several face-to-face interactions with him. (A52-53). The Instagram account Det. Lerro associated with Swanson used the account name "Lamont_Margeez." (A53). He explained that "Lamont" referenced a street Swanson frequented and at which Det. Lerro had observed Swanson. (A53). Det. Lerro identified the second part of Swanson's account name, "Margeez," as Swanson's nickname. (A53-54). In addition to linking Swanson to the account name, Det. Lerro had previously seen photographs and videos of Swanson on that account. (A54).

On August 22, 2023, at approximately 12:57 p.m., Swanson posted a video to his Instagram story (the "Instagram Video"). (A59; State's Trial Ex. 2). An Instagram story post lasts for only 24 hours. (A55). Such a post is not live and

identifies only when the video was posted not created. (A87). Det. Lerro began watching the Instagram Video at approximately 1:25 p.m. (A55-56).

In the video, Det. Lerro saw Swanson wearing "a white bucket hat, a black color hoodie that had Rick and Morty symbols on the hoodie, and ripped jeans." (A56; A59-60). Det. Lerro also identified the location of the video as "the area of 23rd and Jessup Street," a high crime area. (A56; A61). Det. Lerro was familiar with that area because he had patrolled it for years and investigated gun and drug crimes there. (A60-61). He knew Swanson lived approximately one block away from that area. (A62). Det. Lerro recorded the Instagram Video using the screen recording software on his phone. (A56-57). It does not capture any sound. (A63; States Trial Ex. 2).

Approximately 30 seconds into the video, Det. Lerro saw Swanson make motions mimicking shooting an imaginary gun. (A64). Swanson also pulled up the bottom of his hoodie to expose his waistband where Det. Lerro saw a firearm magazine or handle. (A56). Det. Lerro could see the magazine or handle because it obstructed part of the word "Nike" written on Swanson's waistband. (A65). Det. Lerro acknowledged that another person could look at the video and identify the object as something other than a firearm and that he watched the video multiple times to confirm his observation. (A89; A65). Det. Lerro explained that in his experience the location he saw Swanson have the firearm and the motion he made to display it

were consistent with persons carrying and displaying firearms. (A65-66). At the time he watched the Instagram Video, Det. Lerro knew Swanson was a person prohibited. (A66-67).

At about 1:50 p.m., shortly after he finished watching the video, Det. Lerro was contacted by a confidential informant via text message. (A67-68). The informant provided Det. Lerro a copy of the same video he had just finished reviewing. (A68). The informant told Det. Lerro that "Margeez," Swanson's nickname, was in possession of a firearm. (A68-69). Det. Lerro understood the informant had reached that conclusion based on the Instagram Video and not because they were in the same location as Swanson. (A69). Det. Lerro knew the informant to be past, proven, and reliable and had, prior to August 22, 2023, provided information that had led to approximately five arrests. (A71). The informant had never previously provided Det. Lerro with information later found to be inaccurate. (A71).

Approximately twenty minutes later, at 2:10 p.m., the informant contacted Det. Lerro again to advise that they were at 23rd and Jessup and Swanson was still there, still in the same clothes, and still possessed a firearm. (A69-70). Approximately five minutes later at 2:15 p.m., Det. Lerro and other officers responded in a black Dodge Durango. (A71-72). Before officers reached the scene, they were called out, which is when individuals identify and shout out the approach

of police, giving people time to leave or dispose of illegal items in their possession. (A73-74).

When Det. Lerro arrived on scene, he corroborated the informant's tip that Swanson was in the same area depicted in the Instagram Video. (A76-77). Det. Lerro also corroborated the confidential informant's tip that Swanson was wearing the same clothing as depicted in the Instagram Video: a white bucket hat, Rick and Morty sweatshirt, and jeans. (A78). And Det. Lerro corroborated the confidential informant was at the same location because Det. Lerro saw the informant there when he arrived. (A77).

Det. Lerro's partner patted down Swanson because officers believed he possessed a firearm, but they did not locate it. (A79). Officers searched the area around Swanson because they had been called out. (A79). Det. Lerro explained that "we typically practice to [sic] canvas the area when that happens due to people's discarding firearms, discarding drugs and things of that nature." (A79). As a result of that search, officers discovered a firearm with an extended magazine at the top of a trashcan that was approximately 25 to 30 feet from where officers located Swanson. (A80-81). Upon locating the firearm, officers handcuffed Swanson and placed him in the back of a police vehicle while the firearm was secured. (A81). Det. Lerro believed he had probable cause to arrest Swanson; however, rather than unnecessarily charge him, Det. Lerro elected to obtain Swanson's DNA to confirm

Swanson had possessed the gun. (A81). But taking Swanson's DNA was not possible on location because WPD keeps DNA kits in a secured office at the station. (A82). For that reason, WPD transported Swanson to the station. (A82).

In the turnkey area of the station and prior to any officers mentioning DNA, Swanson offered to consent to have his DNA taken. (A84). Officers took Swanson's DNA via buccal swab. (A84-85). Swanson was then free to leave but voluntarily spoke with other detectives about an unrelated matter first. (A84-85). Approximately an hour elapsed between the time officers placed Swanson in handcuffs and the time he was free to leave WPD station. (A85). Det. Lerro explained that in the absence of his consent, he would have drafted a search warrant to obtain Swanson's DNA. (A84).

ARGUMENT

I. POLICE HAD REASONABLE ARTICULABLE SUPICION TO STOP AND DETAIN SWANSON. TRANSPORTING HIM TO THE STATION WAS MINIMALLY INTRUSIVE AND REASONABLY RELATED TO THEIR INVESTIGATION AND SUPPORTED BY PROBABLE CAUSE.

Question Presented

Whether the Superior Court properly determined that police had reasonable articulable suspicion to stop Swanson and detain him while they canvassed the area and whether transporting him to the station was minimally intrusive and reasonably related to the investigation or supported by probable cause.[3]

Standard and Scope of Review

The Superior Court's denial of a pretrial motion to suppress physical evidence after conducting a hearing is reviewed for an abuse of discretion.[4] This Court reviews *de novo* whether the police possessed reasonable articulable suspicion to stop and detain a person.[5] Likewise, "[w]hether the established facts support the trial court's probable-cause determination is a question of law subject to de novo review."[6]

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[3] Opening Br. Ex. A at 10-20.
[4] *Houston v. State*, 251 A.3d 102, 108 (Del. 2021); *Flonnory v. State*, 109 A.3d 1060, 1063 (Del. 2015).
[5] *State v. Murray*, 213 A.3d 571, 577 (Del. 2019); *State v. Rollins*, 922 A.2d 379, 382 (Del. 2007).
[6] *Juliano v. State*, 260 A.3d 619, 626 (Del. 2021) (citing *Lopez v. State*, 861 A.2d 1245, 1248 (Del. 2004)).

Merits of Argument

Swanson argues evidence obtained from him at the WPD police station should be suppressed because police lacked reasonable articulable suspicion to stop him in the first instance and to detain him after he was searched and no firearm was found. Swanson also contends transporting him to the station constituted a *de facto* arrest requiring probable cause, which police did not have.[7] His arguments are unavailing.

A. Police Possessed Reasonable Articulable Suspicion to Stop and Detain Swanson.

Swanson identifies two points at which he contends police lacked reasonable articulable suspicion: (1) the initial stop by police; and (2) his continued detention by police after they searched his person and did not locate a firearm.

1. The Standard Governing Reasonable Articulable Suspicion.

When, as here, an officer stops and detains a person to investigate possible criminal activity, such a seizure must be supported by reasonable articulable suspicion.[8] Reasonable articulable suspicion exists when the officer can "'point to specific and articulable facts, which taken together with rational inferences from

[7] Opening Br. 9-19. The State did not contest below and does not contest here that if Swanson is correct regarding the legality of his stop, detention, or transport the evidence should be suppressed. Opening Br. Ex. A at 7-8.

[8] *Woody v. State*, 765 A.2d 1257, 1262 (Del. 1999); *see also Jones v. State*, 745 A.2d 856, 861 (Del. 1999) ("For the purposes of this analysis, 'reasonable ground' as used in Section 1902(a) has the same meaning as reasonable articulable suspicion.").

those facts, reasonably warrant th[e] intrusion.'"[9] A police seizure of a person is evaluated for reasonableness under the totality of the circumstances, including "inferences and deductions that a trained officer could make which might well elude an untrained person."[10] There must be a "particularized and objective basis for suspecting legal wrongdoing" to establish reasonable and articulable suspicion of criminal activity.[11] In determining whether reasonable suspicion exists to justify a detention, "the court defers to the experience and training of law enforcement officers."[12]

2. WPD Possessed Reasonable Articulable Suspicion to Stop Swanson.

In his argument that police lacked reasonable articulable suspicion to stop him, Swanson identifies several facts in the record and purports to explain why they do not support a finding of reasonable articulable suspicion.[13] However, Swanson isolates each fact, divorcing it from its context. For example, Swanson notes, "[Det.] Lerro had no idea whether the video was created the same day it was

[9] *Bryant v. State*, 2017 WL 568345, at *1, n.1 (Del. Feb. 8, 2017) (quoting *Jones*, 745 A.2d at 861) (brackets in original); *see Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989).
[10] *Hall v. State*, 981 A.2d 1106, 1110 (Del. 2009) (quoting *Lopez-Vazquez v. State*, 956 A.2d 1280, 1286-87 (Del. 2008).
[11] *Hall*, 981 A.2d at 1110 (quoting *Sierra v. State*, 958 A.2d 825, 828 (Del. 2008)).
[12] *Flowers v. State*, 195 A.3d 18, 27 (Del. 2018) (quoting *Woody*, 765 A.2d at 1262).
[13] Opening Br. at 12-15.

posted."[14] This is true in the limited sense that Det. Lerro agreed the Instagram Video could have been filmed on a day different than the one it was posted.[15] However, it is reasonable to infer the Instagram Video was made around the time it was posted, and Swanson's clothing and location matching that in the video supports that inference.[16]

Swanson's remaining arguments regarding the facts suffer the same infirmity. He next points to Det. Lerro's testimony providing no reason why miming the action of pointing a gun supported reasonable articulable suspicion that Swanson had a gun.[17] That Swanson was doing so to warn others he had a gun is supported by other actions Swanson took to demonstrate he had a gun, such as lifting his hoodie consistent with someone displaying a gun and both Det. Lerro and the confidential informant seeing Swanson display a gun in the Instagram Video.[18] Swanson also points to Det. Lerro's admission that where he saw a firearm in the video someone else could see a different object.[19] This ignores that Det. Lerro saw a firearm,[20] that the Superior Court found Det. Lerro's testimony on this point credible,[21] that the

[14] Opening Br. at 12.
[15] A87 ("Q: So it would be fair to say it's possible the video could have been taken another day? A: Sure.").
[16] A78.
[17] Opening Br. at 12.
[18] A65-68.
[19] Opening Br. at 12-13.
[20] A65.
[21] Opening Br. Ex A. at 12.

informant independently saw a firearm in the same video,[22] and that the informant saw Swanson with a firearm in person.[23] Swanson criticizes the informant's tip for not providing specific information, arguing it "added nothing."[24] But he ignores what it does provide, such as confirmation that the video shows a gun, confirmation that Swanson was in the same location as the video and wearing the same clothes, and confirmation that Swanson still possessed a gun. Last, Swanson argues the "call out" is of little value because there is no evidence it was directed at Swanson.[25] Here, officers were called out before they had sight of the scene, preventing them from identifying if the callout was directed at Swanson, but even if it is discarded from the reasonable articulable suspicion analysis, it does not negate any of the other facts that establish reasonable articulable suspicion[26]

That these facts establish reasonable articulable suspicion is demonstrated by this Court's precedent. For example, in *Purnell v. State*, this Court found police had reasonable articulable suspicion based primarily on a tip from a confidential informant.[27] That informant told police that two individuals were in possession of and selling drugs at a specified location in Wilmington.[28] The informant described

[22] A67-68.
[23] A69-70.
[24] Opening Br. at 13-14.
[25] Opening Br. at 14-15.
[26] A73 ("[W]e did get called out prior to pulling into the block.").
[27] 832 A.2d 714, 716-17 (Del. 2003).
[28] *Id.* at 716.

the clothing worn by one the individuals as black pants and a black three-quarter length jack with white lettering on the back.[29] Officers responded to the area, but were initially unable to locate the individuals.[30] The police eventually found Purnell, who was wearing clothes matching the above description, in the general vicinity and stopped him.[31] This Court concluded the officers possessed reasonable articulable suspicion to stop Purnell because the informant was past proven reliable and gave a description of clothing and criminal conduct and officers corroborated the tip, finding Purnell wearing the clothes described and in the general vicinity identified.[32]

So too here. The informant was past proven and reliable.[33] They described Swanson's clothing, location, and criminal conduct.[34] And, when officers arrived on scene, they corroborated the tip, finding Swanson wearing the same clothes and in the same location the informant described.[35] Under *Purnell*, that alone is sufficient to establish reasonable articulable suspicion. But here, additional facts

[29] *Id.* at 716-17.
[30] *Id.* at 717.
[31] *Id.* at 717.
[32] *Id.* at 720.
[33] A71.
[34] A68 (informant sent Det. Lerro a video showing Swanson's clothing and advising Det. Lerro Swanson had a firearm); A69-70 (informant advised that they were in the same location as Swanson, which was the same location as the video, that Swanson was wearing the same clothes as seen in the video, and that Swanson was still in possession of the firearm).
[35] A77-78.

also support that finding. Swanson was in high crime area.[36] Both Det. Lerro and the confidential informant were familiar with Swanson.[37] Shortly before the informant relayed information from Swanson's location, Swanson posted a video in which he possessed a firearm and was wearing the same clothes and in the same location as identified by the informant.[38] In that video, Swanson also suggested he possessed a firearm by miming shooting an imaginary gun and lifting up his hoodie in a fashion meant to display a firearm.[39] As officers arrived on scene, those present called them out.[40] And these events all happened in a concise window with Swanson posting the video at 12:57 p.m.,[41] Det. Lerro viewing that video at 1:25 p.m.,[42] the informant contacting Det. Lerro regarding the video at approximately 1:50 p.m.,[43] the informant arriving on scene at 2:10 p.m.,[44] and officers arriving on scene at 2:15 p.m.[45]

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[36] A61. *See, e.g.*, *Woody*, 765 A.2d at 1265 (observing that "high crime nature of the area" was alone insufficient to establish reasonable articulable suspicion but that it was a "relevant contextual consideration") (quoting *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000)).
[37] A53; A68 (confidential informant identified Swanson by his nickname). *See, e.g.*, *State v. Holden*, 60 A.3d 1110, 1116 (Del. 2013) (finding evidence that informant knew suspect well corroborative of the informant's information regarding suspect).
[38] A70; State's Trial Ex. 2.
[39] A64-66; State's Trial Ex. 2.
[40] A73.
[41] A59.
[42] A58.
[43] A67.
[44] A69.
[45] A71-72.

Even if the tip were anonymous, police had reasonable articulable suspicion to stop Swanson.[46] In *Ross v. State*, officers received an anonymous tip of a male wearing gray pants and selling drugs in a specific location; it provided no information on his race or size.[47] Officers responded to the scene and identified several males present but only one wearing gray pants, Ross.[48] Officers drove alongside Ross as he unhurriedly walked away and asked to speak with him, but he refused to engage with them.[49] Ross eventually stopped to speak to another person on the street in a low voice and reached out to the person with a cupped hand in a manner consistent with the transfer of illegal drugs; the person backed away and shook his head.[50] At that point, officers seized Ross.[51] This Court ruled the officers had reasonable articulable suspicion because Ross's actions corroborated the anonymous tip.[52]

Here, the confidential informant's tip provided police with Swanson's location, described the clothes he was wearing, and described a crime he was

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[46] In general, anonymous tips or tips from an unfamiliar informant are considered less reliable than tips from past and proven confidential informants. *See, e.g.*, *Miller v. State*, 25 A.3d 768, 773 (Del. 2011) (observing that familiarity between officer and informant made the informant's tip "more reliable than the information of a one-time anonymous caller"); Opening Br. Ex. A at 14 n.77.)
[47] 925 A.2d 489, 491 (Del. 2007).
[48] *Id.* at 491.
[49] *Id.*
[50] *Id.* 491, 493.
[51] *Id.* at 493.
[52] *Id.* at 494.

committing—possessing a firearm.[53] The video Det. Lerro had observed prior to that tip corroborated these observations.[54] In the video, Swanson lifted his hoodie consistent with someone displaying a gun and mimed shooting an imaginary firearm.[55] That this corroboration of the informant's tip occurred before the tip came in does not distinguish it from *Ross*, as the informant did not know officers already knew this information when they first contacted police. Moreover, police further corroborated the tip when they observed the confidential informant and Swanson at the location and Swanson wearing the same clothes the informant identified.[56]

3. WPD Had Reasonable Articulable Suspicion to Detain Swanson.

Swanson also asserts that even if police had reasonable articulable suspicion that was "dispelled at th[e] moment" police searched Swanson and found no firearm.[57] Swanson did not raise this issue below.[58] When an appellant raises an argument in support of a contention for the first time on appeal in connection with a

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[53] A69-70.
[54] A59-60 (describing Swanson's clothes in the video); A60-61 (describing Swanson's location in the video); A64-65 (describing Swanson possessing a firearm in the video).
[55] A64-66; State's Trial Ex. 2.
[56] A77-78.
[57] Opening Br. 15.
[58] *See* A13-15 (Swanson's opening brief below discussing his argument regarding WPD's stop of Swanson); A100-09 (counsel for Swanson's oral argument in the court below); Opening Br. Ex. A at 10-15 (discussing Swanson's arguments regarding the WPD's stop of Swanson).

motion to suppress, this Court reviews that argument for plain error.[59] "Plain error is just that, an error so obvious and fundamental that it would be unjust not to take into account on appeal."[60] Swanson identifies no precedent, binding or otherwise, to establish that WPD's continued detention of Swanson in order to search the surrounding area constituted plain error. Nor does he explain why the error was so plain as to be unjust. He has, accordingly, failed to establish plain error.

Even if the Court addressed this issue *de novo*, a finding that the officers had reasonable articulable suspicion to detain Swanson while they canvassed the area is consistent with this Court's precedent. A stop based on reasonable articulable suspicion must be "'reasonable related in scope to the circumstances which justified the interference in the first place.'"[61] "Whether a detention is reasonably related to the purpose of the stop 'necessarily involves a fact intensive-inquiry in each case.'"[62] For example, in *Howard v. State*, Howard contended a 40-minute detention following a traffic stop to obtain "the assistance of a drug sniffing dog" was

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[59] *See, e.g.*, *Lum v. State*, 2018 WL 4039898, at *1 (Del. Aug. 22, 2018) ("[Lum's] only argument is that the weapon seized from him should have been suppressed as evidence. Only one of Lum's arguments in support of that contention was properly raised below. . . On appeal, Lum has surfaced two additional arguments that he did not present below. These cannot be the basis for reversal unless they involve plain error.").
[60] *Id.*
[61] *Flowers*, 195 A.3d at 25 (quoting *Hiibel v. Sixth Jud. Dist. Ct. of Nev., Humboldt City*, 542 U.S. 177, 185 (2004)).
[62] *Spencer v. State*, 2018 WL 3147933, at *2 (Del. June 25, 2018) (quoting *Caldwell v. State*, 780 A.2d 1037, 1048 (Del. 2001)).

unreasonable.[63] This Court found the argument meritless and determined the conduct reasonably related to the officers' drug dealing investigation and pointed to the statute's two-hour window, with which the stop complied.[64]

Here, a search of the surrounding area was reasonably related to the officers' initial reason for stopping Swanson—that he had a firearm. Police arrived just five minutes after receiving the tip.[65] When officers arrived on scene, they corroborated two portions of the informant's tip: Swanson was at the location and wearing the clothes the informant had identified.[66] They were unable to corroborate the last portion—Swanson's possession of a firearm—when they searched him.[67] That created a discrepancy, with some of the tip corroborated and some not. Officers' rapid arrival and the callout of officers as they arrived on scene gave a reasonable explanation, as Det. Lerro detailed: "[C]allouts give people that are in the block or in the immediate area that are involved in illegal activity, whether it's firearms, drug related, or wanted in reference to other related things, time to either leave the area or get whatever they have off them."[68] And he went on to explain that where officers are called out, their typical practice is "to canvas the area when that happens due to

[63] *Howard v. State*, 2007 WL 2310001, at *3 (Del. Aug. 14, 2007).
[64] *Id.* at *1, 4.
[65] A71-72.
[66] A75; A78.
[67] A79.
[68] A73.

people discarding firearms, drugs, and things of that nature."[69] That canvas revealed the firearm approximately 25-30 feet from Swanson.[70] The discrepancy of two parts of the informant's tip being corroborated and one not, the callout of officers, and WPD's typical practice of performing a canvas following a callout all demonstrate Swanson's continued detention for that canvas was reasonably related to the initial purpose of the stop.

B. It Was Minimally Intrusive and Reasonably Related to the Investigation for Police to Transport Swanson to the Police Station, Where He Was Lawfully Detained Within the Two-Hour Detention Period Permitted by 11 *Del. C.* § 1902(c).

Swanson takes the position that WPD transporting him to the police station failed to comport with constitutional protections.[71] Specifically, Swanson relies on *Hayes v. Florida* and contends it created a categorical ban on the removal of suspects from a location absent probable cause or a warrant.[72] *Hayes*, by its plain language, does not support such a reading.[73] And, even if *Hayes* did support that reading,

[69] A79.
[70] A81.
[71] Opening Br. at 15-18.
[72] Opening Br. at 16 (citing *Hayes v. Florida*, 470 U.S. 811 (1985).
[73] *Hayes*, 470 U.S. at 817 ("We also do not abandon the suggestion in *Davis* and *Dunaway* that under circumscribed procedures, the Fourth Amendment might permit the judiciary to authorize the seizure of a person on less than probable cause and his removal to the police station for the purpose of fingerprinting. We do not, of course, have such a case before us.").

officers possessed probable cause to arrest Swanson when they transported him to the station.

1. Swanson Misreads *Hayes* and Transporting Him to the Station Was Consistent with this Court's Precedent.

In *Hayes*, officers were investigating a series of burglary-rapes.[74] At the residence of one of the victims, they located a latent fingerprint.[75] Investigators "had little specific information to tie petitioner Hayes to the crime" but "came to consider petitioner a principal suspect."[76] They went to Hayes' home to obtain his fingerprints or arrest him.[77] When he was reluctant to go to the station for fingerprinting, officers said they would place him under arrest.[78] In response, Hayes agreed to go to the station, a response later deemed coerced.[79] Hayes was fingerprinted and convicted.[80] The United States Supreme Court overturned Hayes' conviction, which relied on the fingerprints, citing its prior decision in *Davis v. Mississippi*.[81]

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[74] *Id.* at 812.
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.* at 812-13.
[80] *Id.* at 813.
[81] *Id.* at 813-14 (citing *Davis v. Mississippi*, 394 U.S. 721 (1969)).

In *Hayes*, as had occurred in *Davis*, the Court explained, there was no probable cause to arrest, no consent, and no judicial authorization for the transport.[82] In light of the foregoing, the Court found the transport to the station unlawful.[83] Importantly, however, the Court recognized that it was not creating a categorical ban against transport to a station for fingerprinting in the absence of probable cause: "We also do not abandon the suggestion in *Davis* and *Dunaway* that under circumscribed procedures, the Fourth Amendment might permit the judiciary to authorize the seizure of a person on less than probable cause and his removal to the police station for the purpose of fingerprinting."[84]

Likewise, this Court has identified distinct concerns with the transport of suspects without probable cause.[85] But there is no absolute bar against transport, as this Court determined in *Delvalle v. State*.[86] In that case, officers saw Delvalle and mistook him for another individual then-wanted for a recent burglary.[87] Shortly after officers placed handcuffs on Delvalle, the identifying officer expressed skepticism

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[82] *Id.* at 814-15.
[83] *Id.*
[84] *Id.* at 817.
[85] *Hicks v. State*, 631 A.2d 6, 11 (Del. 1993). ("Separate and distinct concerns attach to the officer's decision to remove Hicks from the scene of the initial detention. Although in isolated cases the police may move a suspect without exceeding the bounds of a legitimate investigative detention, the Delaware rule remains that an investigatory detention must be minimally intrusive and reasonably related in scope to the circumstances which justify the interference.") (internal footnotes omitted).
[86] 2013 WL 4858986, at *1 (Del. Sept. 10, 2013).
[87] *Id.*

that Delvalle was the burglary suspect.[88] Delvalle could not produce any form of identification and gave officers a fake name and date of birth, which they were unable to verify.[89] Without placing him under arrest, officers took Delvalle to the police station to identify him.[90] At the station, officers searched him and located a firearm and drugs, which resulted in associated charges.[91] On appeal, this Court determined the officers possessed reasonable articulable suspicion to transport Delvalle to the station to continue their investigation into his identity.[92] This Court concluded it was lawful for officers to take Delvalle to the police station for fingerprinting under the circumstances to determine his identity.[93]

Here, the Superior Court anchored its analysis in *State v. Kang*.[94] In *Kang*, the court addressed the transport of a DUI suspect from an accident scene to another location to conduct field sobriety tests.[95] The court found transport reasonable and necessary given several different concerns stemming from an incline roadway, a

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[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Id.* at *1-2.
[92] *Id.* at *3.
[93] *Id.*; *see also Buckingham v. State*, 482 A.2d 327, 333-34 (Del. 1984) (finding transport of suspect to be viewed by witnesses in connection with ongoing investigation lawful).
[94] Opening Br. Ex A. at 15 (citing *State v. Kang*, 2001 WL 1729126 (Del. Super. Nov. 30, 2001).
[95] *Kang*, 2001 WL 1729126, at *8.

large crowd, and defendant's deceased friend's body remaining at the scene.[96] While the Superior Court here recognized that *Kang* presented significant factual differences, it reasoned that Swanson's transportation was necessary because police could not test Swanson's DNA on the street.[97] It concluded that Swanson's transportation was "'minimally intrusive and reasonably related in scope.'"[98]

Contrary to Swanson's contention, *Hayes* expressly rejects a bright-line rule prohibiting the transportation of suspects to police stations where police possess only reasonable articulable suspicion. Consistent with the absence such a rule, this Court has found the transportation of suspects to police stations lawful where officers possessed reasonable articulable suspicion and not probable cause. Further, as the Superior Court reasoned, WPD keeps DNA test kits in a locked office at the station and officers could not test Swanson's DNA on the street. And the transport and resulting detention did not exceed the statutory limit on such investigative detentions.[99] Transporting Swanson to the station was, therefore, minimally intrusive and reasonably related to the firearm investigation WPD was conducting. Swanson's transport to the station was, accordingly, lawful.

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[96] *Id.* at *8-9.
[97] Opening Br. Ex A at 15-16.
[98] Opening Br. at 16 (quoting *Hicks*, 631 A.2d 6 at 12).
[99] 11 *Del. C.* § 1902; Opening Br. Ex. A at 20.

2. Even if this Court Determines WPD Effected a *De Facto* Arrest of Swanson by Transporting Him, the Arrest was Supported by Probable Cause.

Assuming *arguendo* that WPD effectively placed Swanson under arrest at the time they transported him to the station, they possessed probable cause.[100] As this Court has explained, probable cause "is incapable of precise definition."[101] Although not a precise definition, the substance of probable cause is "reasonable ground for belief of guilt."[102] Thus, it exists where the facts and circumstances an officer knows of "warrant a person of reasonable caution to believe that a crime has been committed."[103] It does not require guilt be more likely than not, only a fair probability that criminal conduct occurred.[104]

This Court has often found tips provided by past proven reliable informants which are then corroborated by officers establish probable cause. For example, in *King v. State*, this Court found officers had probable cause where such an informant

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[100] The Superior Court did not address whether the State had probable cause to arrest Swanson, as it resolved the case on reasonable articulable suspicion grounds. Opening Br. Ex. A at 8 n.44. This Court has previously affirmed the lawfulness of a seizure by finding probable cause when the lower court resolved the matter by finding reasonable articulable suspicion. *See e.g.*, *Darling v. State*, 768 A.2d 463, 465-66 (upholding Superior Court's denial of motion to suppress on the grounds that the seizure of defendant constituted arrest and therefore required probable cause which officers had).

[101] *Stafford v. State*, 59 A.3d 1223, 1229 (Del. 2012) (quoting *Lopez*, 861 A.2d at 1248).

[102] *Id.* (quoting *Maryland v. Pringle*, 540 U.S. 366, 371 (2003)).

[103] *Id.* (citing *Tolson v. State*, 900 A.2d 639, 643 (Del. 1988)).

[104] *Id.* (citing *State v. Maxwell*, 624 A.2d 926, 928, 930 (Del. 1993)).

provided a detailed description of the person, identified the location they were in, which was "known to be a drug area," and stated that the person had a large amount of cocaine.[105] This Court found "[u]nder the totality of circumstances, when police arrived at the scene and saw King, who matched the description, they had probable cause to arrest him for the felony."[106] Similarly, in *Fuller v. State*, such an informant provided a description of a probationer and their vehicle and advised they were selling drugs in a specific area.[107] Police located a vehicle and driver matching the description in the area provided by the informant and confirmed the vehicle belonged to the probationer.[108] The vehicle did not immediately stop for officers when they signaled for the vehicle to stop but did eventually do so.[109] This Court found the search of the vehicle, independent of search standards applicable to a probationer, met the probable cause standard because they received the tip, corroborated certain aspects of it, and the vehicle did not immediately stop.[110] Last, in *Darling v. State*, a past proven reliable informant advised an officer that Darling was selling crack cocaine at a specific location in a well-known drug area around a specific vehicle.[111] Officers ran a search on the suspect and found a photograph of him and learned he

[105] *King v. State*, 1993 WL 445484, at *2 (Del. Nov. 1, 1993).
[106] *Id.*
[107] 844 A.2d 290, 291 (Del. 2004).
[108] *Id.*
[109] *Id.*
[110] *Id.* at 293.
[111] 2004 WL 1058363, at *1 (Del. Apr. 29, 2004).

was on probation.[112] When officers responded to the scene, they saw Darling and two others by the vehicle; all of them fled and Darling was apprehended.[113] A plastic bag containing marijuana was found in the area Darling was apprehended, but no one saw him discard the package.[114] This Court found officers had probable cause to place Darling under arrest.[115]

Such is the case here. Det. Lerro saw Swanson commit a crime in the Instagram Video—possessing a firearm when he was a person prohibited.[116] Shortly thereafter, the confidential informant independently confirmed Swanson had a gun in that video when they alerted Det. Lerro to the video and stated that it showed Swanson with a firearm.[117] What Det. Lerro did not know was when this crime had been committed because while Swanson posted the video at a specific time the video itself not time stamped.[118] Circumstantial proof of when the video took place came shortly thereafter when the confidential informant advised they were in the same location as Swanson, that he was wearing the same clothes he had been in the video,

[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] A65-67; State's Trial Ex. 2.
[117] A68.
[118] A87.

that he was in the same location he had been in in the video, and that he still had a firearm.[119]

In any case, and regardless of when the video was posted, police had a tip from a past proven reliable informant that Swanson was committing a crime, details of his clothing, and information on his location. Officers went to the location.[120] They were called out.[121] They found Swanson in the location provided by the informant and wearing the same clothes described by the informant.[122] Yet a search of Swanson did not reveal a firearm.[123] Reasoning that the callout when they arrived would have allowed Swanson to dispose of the firearm, which was consistent with Det. Lerro's experience, officers, consistent with their typical practice when called out, canvased the area.[124] The officers located a firearm approximately 25-30 feet from Swanson hidden in a trashcan.[125] This corroborated the final component of the confidential informant's tip. A reasonable person could conclude it was more likely than not that Swanson possessed the firearm illegally as he was a person prohibited based on the foregoing. Even if this Court determined the police effected a *de facto* arrest when they transported Swanson to the police station, such an arrest was

[119] A69-70.
[120] A71-72.
[121] A73-74.
[122] A77-78.
[123] A79.
[124] A79.
[125] A80-81.

constitutionally permissible because officers possessed probable cause to arrest him at that time.

II. THE SUPERIOR COURT DID NOT COMMIT PLAIN ERROR WHEN IT DID NOT ASK PROSPECTIVE JURORS WHETHER THEY WERE EVER THE VICTIM IN A CRIMINAL CASE.

Question Presented

Whether a trial court must ask prospective jurors during *voir dire* whether they have ever been the victim in a criminal case.[126]

Standard and Scope of Review

"Determining 'the scope of voir dire examination lies in the broad discretion of the trial judge, and is subject to review only for abuse of that discretion. Essential fairness is the standard.'"[127] Because Swanson's claim is raised for the first time on appeal, this Court's review is "for plain error, which means '[an error] so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.'"[128]

Merits of Argument

Swanson argues that this Court's decision in *Knox v. State* sets forth a bright-line rule that requires a trial court to ask of a jury some variation of the question "whether [potential jurors] have been or currently are victims in a pending criminal case."[129] This question, Swanson contends, is critical to ensuring a defendant

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[126] This matter was not raised below. Opening Br. at 21.
[127] *Johnson v. State*, 2009 WL 2006881, at *2 (Del. July 13, 2009) (quoting *Jacobs v. State*, 358 A.2d 725, 728 (Del. 1976)).
[128] *Rodriguez v. State*, 2001 WL 58961, at *1 (Del. Jan. 18, 2001) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (brackets in original)).
[129] Opening Br. at 20.

receives the benefits of an impartial jury.[130] Swanson contends such a question weeds out any bias a potential jury may have to the State.[131] To that end, he explains that in the absence of that question, "there was no way for Swanson to probe the potential bias during *voir dire*."[132] Swanson contends other questions, such as whether prospective jurors know anyone in the prosecutor's office did not permit him to identify such bias.[133] Swanson concludes the failure to ask the victim question amounts to plain error.[134] He is wrong.

A. This Court's Decision in *Knox*.

In *Knox*, the appellant was charged with writing bad checks.[135] During *voir dire*, the trial judge asked jurors whether they knew anyone in the Attorney General's office.[136] No jurors responded in the affirmative.[137] The *voir dire* questions did not include whether any of the jurors had been the victim of a crime.[138] The jury was empaneled and Knox eventually convicted.[139] Five days after Knox' conviction, the

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[130] Opening Br. at 22 ("The court's failure to ask that question in our case amounts to plain error. It denied Swanson his fundamental rights to trial by an impartial jury.").
[131] Opening Br. at 21-22.
[132] Opening Br. at 21.
[133] Opening Br. at 22.
[134] Opening Br. at 22.
[135] *Knox*, 29 A.3d at 219.
[136] *Id.* at 220.
[137] *Id.*
[138] *Id.* at 219.
[139] *Id.* at 219-20.

prosecutor in Knox's case met with the victim in a separate case.[140] The prosecutor realized this victim had been a member of Knox's jury.[141] The prosecutor informed the court, and "Knox filed a motion for a new trial on the ground that [the juror] was a victim in a pending case being prosecuted by the same Deputy Attorney General who prosecuted [Knox]."[142] The trial court ordered the parties depose the juror outside the presence of the court.[143] During the deposition, their questions addressed "whether [the juror] knew the attorney general or anyone in his office but not whether he was influenced by his experience as a victim of a crime."[144]

This Court held the denial of Knox's motion for a new trial was plain error.[145] In assessing the issue, this Court highlighted that it lacked an evidentiary record proving any biases stemming from the juror being a crime victim.[146] In the absence of such a record, the question before the Court was whether the juror's status as a victim alone, without other facts, raised the specter of bias so significant that it denied Knox a substantial right.[147] Among other things, the Court observed the common practice in "violent crime cases" to ask jurors whether they have ever been

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[140] *Id.* at 220.
[141] *Id.*
[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.* at 225.
[146] *Id.* at 220-21.
[147] *Id.*

the victim of violent crimes.[148] The logic of the question, it explained, was "a belief that the victims would be unable to separate their personal experiences with violent crimes when adjudicating the current case."[149] It reasoned that concern was also at issue in Knox's case because the bad check charges were similar to the charges in the case where the juror was a victim.[150] It concluded that the facts of the case "create[d] serious questions about [the juror's] ability to be objective" and found the denial of the motion for a new trial to be plain error.[151]

B. *Knox* Fails to Show the Superior Court Committed Plain Error.

Contrary to Swanson's contentions, *Knox* is distinguishable and not dispositive here. First, *Knox* is limited to its facts, which as this Court noted were "unique" and "unusual." Second, *Knox* does not stand for the proposition Swanson asserts that it does. Third, the trial court here sufficiently probed bias, which was the Court's concern in *Knox*. Fourth, the result Swanson seeks here would be inconsistent with other precedent of this Court. All four reasons provide an independent basis to find Swanson has failed to demonstrate plain error.

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[148] *Id.* at 222.
[149] *Id.*
[150] *Id.*
[151] *Id.* at 223-24.

1. *Knox* Is Factually Distinguishable.

Knox is distinguishable on the facts.[152] Primarily, there is no victim here. Swanson was charged with and convicted of two counts: PFBPP and PABPP. And, as such, the acute concerns generated by a victim of a robbery serving as a juror for a defendant accused of writing bad checks or a violent crime victim serving as a juror for a defendant accused of a violent crime are not implicated here. Additionally, there is no evidence that anyone on Swanson's jury was a victim of a crime. Nor did the trial court conduct a post-trial deposition that failed to inquire into potential bias. *Knox* is simply not this case, and Swanson's reliance on it does not support a finding of plain error.

2. *Knox* Does Not Stand for the Rule Swanson Argues.

Moreover, the rule Swanson divines from *Knox*—*voir dire* must inquire into whether the prospective jurors are or have been victims of a crime—is found nowhere in its text. While this Court observed that victim status was "commonly ask[ed]" in "violent crime cases," this Court never stated that such a question was asked in *all* violent crime cases nor that it *should* be asked in all criminal cases going forward. Indeed, the Court later states that it is "routine" in nonviolent criminal

[152] As this Court noted, *Knox* was a "unique" case with "unusual circumstances." *Id.* at 221-22, 224-25. *See, e.g.*, *Swan v. State*, 248 A.3d 839, 861-62 (Del. 2021) (distinguishing *Knox* on its facts from case involving juror whose family member had been murdered years earlier because that did not create the same alignment of interests at issue in *Knox*).

cases for the Superior Court to *not ask* whether any jurors have been the victim of a crime.[153] *Knox* is silent on the merits of that routine. That silence is especially notable because elsewhere in *Knox* the Court gave direction to trial courts in future cases and in other cases has directed trial courts when they must include specific questions in *voir dire*.[154] Because *Knox* does not establish the rule Swanson contends, Swanson has failed to show that the Superior Court committed error.

3. The Trial Court Sufficiently Probed Bias.

Even if *Knox* had some application here, the trial court's questions during *voir dire* satisfy *Knox*. The context of *Knox* explains why the Court emphasized the juror's status as a victim in that case; there was nothing else from which to assess the juror's bias.[155] But the lodestar of the Court's analysis was always bias.[156] That

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[153] *Id.* at 224 ("Furthermore, the trial judge did not ask [the juror] during *voir dire* whether he could be impartial given his status as a victim in a pending criminal case for the rather obvious reason that there was no information to suggest that any member of the venire was a victim; or, for that matter that any practice in Superior Court existed to ask the question as a matter of routine in the trial of a nonviolent crime.").

[154] *Id.* ("We hold that, in the future, all post trial inquiries into juror bias must be concluded in a proceeding before the judge."); *Diaz v. State*, 743 A.2d 1166, 1173 (Del. 1999) (directing that "English-only speaking jurors should be asked during voir dire if the fact that some testimony would be given in a language other than English would influence them in anyway.").

[155] *Knox*, 29 A.3d at 223.

[156] *Id.* 224 ("The juror's] awareness that the Attorney General's Office represented him in a separate, pending trial, deprived Knox of the inalienable right to an impartial jury.").

is unsurprising given the purpose of *voir dire*.[157] Swanson recognizes as much, arguing that the trial court's failure to ask about victim status here denied him the ability to probe bias.[158] That, however, is not the case. Indeed, the trial judge court asked the following during *voir dire*:

> Do you have strong feelings about prosecutors, defense attorneys, or the criminal justice system that would affect your ability to render a fair and impartial verdict based solely on the evidence presented at trial?[159]

Swanson cannot claim he was denied the ability to probe potential juror bias towards the State when the trial court asked if jurors had a bias towards the State. He has, accordingly, failed to show plain error.

4. Swanson's Argument Is Inconsistent with this Court's Precedent.

Swanson's argument in the absence of a question regarding victim status is that there *may* have been bias. This Court rejected a similar argument in *Green v. State*.[160] In *Green*, for the first time on appeal, Green claimed that the trial court permitted "a former prosecutor or court employee to serve on the jury without

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[157] *See, e.g.*, *Cooke v. State*, 97 A.3d 513, 554 (Del. 2014) ("The purpose of *voir dire* is to provide the Superior Court and the parties with 'sufficient information to decide whether prospective jurors can render an impartial verdict based on the evidence developed at trial and in accordance with the applicable law.'") (quoting *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985)).
[158] Opening Br. at 21.
[159] A134.
[160] 2015 WL 4351049 (Del. July 14, 2015).

conducting sufficient *voir dire*."[161] This Court reviewed the transcript of the jury *voir dire* and found nothing in it reflected that any of the "jurors identified themselves as a former prosecutor or court employee."[162] Green's counsel exercised several challenges and then indicated he was content with the jury.[163] This Court found nothing in the record supported Green's contentions and ruled that "[i]n the absence of any evidence supporting Green's contentions regarding the jury, we conclude that Green has not shown plain error."[164]

The result here should be no different. Swanson, like Green, identifies no actual victim on his jury. Instead, he contends that such a person may have served on his jury. Nothing in the record supported that in *Green*, and nothing supports it here. Swanson, like Green, exercised several challenges and indicated he was content with the jury.[165] Consistent with *Green*, Swanson has failed to show plain error in the absence of any evidence to support his contentions regarding the jury.

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[161] *Id.* at *5. Green also argued a different juror had served in one of the detention facilities in which Green was housed, but this Court noted a *voir dire* question had asked whether any of the jurors knew Green, indicating none of them had worked at such a facility. *Id.* at*5 n.17. This Court noted no comparable question as to whether any of the jurors were former prosecutors or court employees. *Id.* at *5.
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] A135-36; A138.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgement below.

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Dated: June 16, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARVIN SWANSON,	)	
	)	
Defendant Below,	)	
Appellant,	)	No. 489, 2024
	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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