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Case Number 364,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH SWANSON,	§	
	§	
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	No. 364, 2024
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

Kenneth J. Nachbar (#2067)
Julie (Jo) M. Donoghue (# 3724)
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

Date: May 19, 2025

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NATURE OF PROCEEDINGS

Kenneth Swanson ("Swanson") was indicted on September 11, 2023, for Drug Dealing (25 grams or more of Cocaine), Drug Possession (25 grams or more of Cocaine), and Driving a Vehicle While License is Suspended or Revoked. (A1 at D.I. 3; A5-6; A9).[1] On March 25, 2024, Swanson waived his right to trial by jury. (A3 at D.I. 16; A7-8).

After a bench trial on March 26, 2024 the Superior Court found Swanson guilty of Drug Possession. (A3 at D.I. 16; A57). The State entered a *nolo prosequi* on the two remaining charges. (A3 at D.I. 16; A59). On April 1, 2024, the State filed a motion to declare Swanson a habitual offender. (A3 at D.I. 18). On August 16, 2024, the Superior Court granted the motion. (A3 at D.I. 22). On the same day, the court sentenced Swanson to ten years at Level V, suspended after six years, followed by decreasing levels of supervision. (Ex. A to Opening Br.; A77).

Swanson filed his notice of appeal on August 29, 2024, followed by his opening brief. This is the State's answering brief.

[1] "DI_" refers to the Superior Court docket item numbers in *State v. Kenneth Swanson*, ID No. 2306003673.

SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. Swanson did not fairly present his claim of a violation of the Fourth Amendment to the United States Constitution and has waived it on appeal absent plain error. In any event, the limited record does not establish plain error. Even if the Court considers Swanson's claim on the merits, it should be rejected. The officers here conducted a proper, reasonable search incident to a lawful arrest. Prior to that search, Detective Randazzo had information that Swanson might be in possession of illegal drugs. During the lawful search incident to arrest of Swanson, Detective Randazzo felt a hard object in the shape of a ball in Swanson's groin area that he believed to be illegal drug contraband. Thus, the officers' seizure of the illegal drugs from Swanson's person was reasonable. And, because Detective Randazzo could feel the illegal drugs by simply touching Swanson's clothes, the officers were justified in seizing the illegal drugs based on the plain touch doctrine, too.

Swanson's reliance on the test set forth in *Bell v. Wolfish*[2] to determine the reasonableness of strip searches under the Fourth Amendment is misplaced because this case does not involve a strip search, but rather a lawful search incident to arrest. Even if the *Bell* factors apply generally to Fourth Amendment searches, not just strip searches, the search of Swanson's groin was also reasonable under the *Bell*

[2] *Bell v. Wolfish*, 441 U.S. 520 (1979).

factors. Specifically, (i) the search was quite limited, as it lasted a matter of seconds and involved Probation Officer Walker pulling the waistband of Swanson's shorts and underwear horizontally away from his body, at which point Probation Officer Walker saw and reached in to retrieve the foreign object (illegal drugs); (ii) the manner of the search was reasonable because it was quite discrete given that no part of Swanson's genital area was publicly exposed at any point; (iii) the search was fully justified because Detective Randazzo had information related by a past proven reliable confidential informant that Swanson was carrying illegal drugs, and during his initial (and indisputably proper) search of Swanson; Detective Randazzo felt a foreign object in Swanson's groin area that he believed to be illegal drugs; and (iv) the place of the search was reasonable under the circumstances because Detective Randazzo believed Swanson's actions while exiting his vehicle showed that he would seek to dispose of evidence if he could. Thus, the search of Swanson incident to his arrest was reasonable under the Fourth Amendment.

STATEMENT OF FACTS

At approximately 11:00 a.m. on June 7, 2023, as part of an active drug investigation involving Swanson, members of the Safe Streets Task Force ("Safe Streets") and officers from the New Castle County Police Department ("NCCPD") established surveillance of Swanson. (A40-41; B3-4).[3] NCCPD Detective Anthony Randazzo, who was familiar with Swanson and was aware that Swanson was on probation, was wanted for violations of probation, and had warrants for his arrest for Manufacture/Deliver/PWID Controlled Substance Tier 3 Quantity, Possession of Controlled Substance Tier 3 Quantity, and Driving While Suspended or Revoked. (A15; A26-27; A41-42; B2-3). Detective Randazzo also had knowledge that Swanson was possibly in current possession of crack cocaine.[4] (A28; B4-5).

[3] Although Swanson failed to assert in the Superior Court that the evidence from the search at issue should have been excluded and also failed to include the arrest warrant, this Court can take judicial notice of the arrest warrant. Thus, the State has the arrest warrant in Appellee's Appendix.

[4] Between January and June 2023, a past proven reliable confidential informant advised Safe Streets that a black male nicknamed "Shizz" was selling large amounts of crack cocaine throughout the Maryland Avenue corridor. (B3). Swanson uses this nickname, and the confidential informant confirmed Swanson as "Shizz." (B3). The confidential informant advised that Swanson operated a gray Nissan sedan with Washington registration plate. (A40-41, B3). On June 7, 2023, the informant advised that Swanson would be in the area of Maryland Avenue, Wilmington, Delaware, and in possession of a large amount of crack cocaine. (B3-4). The confidential informant further advised that Swanson would be operating the Nissan and would be responding to a predetermined location to conduct a sale of crack cocaine. (B4).

After observing Swanson operating a vehicle at the Sunoco gas station on Maryland Avenue in Wilmington, Detective Randazzo approached Swanson's vehicle while it was parked at a gas pump. (A14-15, A32, A42, A47).[5] Five or six additional officers in four vehicles assisted with the arrest. (A35; State's Ex. 1).

Detective Randazzo approached Swanson's parked car, confirmed Swanson's identity, and asked him to exit the vehicle. (A16). Another man was in the car with Swanson. (A15). At the time, there were no other persons or passenger vehicles in the area of the pumps or the store except for other police personnel, one man on a motorcycle parked at an adjacent pump, and two unoccupied passenger cars parked away from the store's entrance. (State's Ex. 1 at 10:58:48, 10:59:35, and 11:01:57).

After Swanson exited the vehicle, Detective Randazzo handcuffed Swanson and placed him under arrest. (A16, A32-33). After handcuffing Swanson, Detective Randazzo moved Swanson to the area between the two sets of parallel gas pumps. (State's Ex. 1 at 10:59:30). Detective Randazzo told a nearby officer that when Swanson was exiting the vehicle, it looked like he had possession of something in his hand, but then he tossed it away. (State's Ex. 1 at 10:59:30). Detective Randazzo asked Swanson what he had in his hand, and Swanson replied that nothing was in

[5] Detective Randazzo said he conducted a "traffic stop," but the officers had a warrant for Swanson's arrest for, among other charges, Driving While Suspended or Revoked and did in fact arrest Swanson. (A15; B2).

his hand. (State's Ex. 1 at 10:59:40). Detective Randazzo began conducting a search of Swanson's person incident to arrest.[6] (A16; State's Ex. 1 at 10:59:40). Detective Randazzo asked Swanson what he had thrown, and Swanson said he did not throw "nothing." (State's Ex. 1 at 10:59:42). During this interaction, a passenger car drove up next to the entrance to the store and parked. (State's Ex. 1 at 10:59:53). While the detective searched Swanson, the man at the adjacent pump started up his motorcycle and left. (State's Ex. 1 at 11:00:17). Then another passenger vehicle began to approach the adjacent pump (State's Ex. 1 at 11:00:29).

During his search of Swanson, who was wearing a white T-shirt and basketball or loose-fitting gym shorts (A27; A31; A48; State's Ex. 1 at 10:59:06), Detective Randazzo felt a hard object in Swanson's groin area in the shape of a ball. (A16-17; State's Ex. 1 at 11:00:30). The detective did not believe that the object was part of Swanson's human anatomy and believed the object to be crack cocaine. (A17, A30-31).

[6] When New Castle County officers arrest a person for a violation of probation or for a warrant, the officers search the arrestee to ensure they do not have contraband or a weapon on their person. (A37). Part of the officers' routine for such a search is to check the individual's groin area from outside the person's garments. (A16, A27-28). That involves officers searching one side of the individual's groin area, going up to a certain point, then going to the other side of the groin area. (A28).

As the approaching passenger vehicle stopped at the adjacent pump (State's Ex. 1 at 11:00:34),[7] Detective Randazzo told Probation Officer Walker that he thought Swanson had crack cocaine in his crotch area and asked Walker, who had put on gloves, to retrieve the object.[8] (A17, A30-31, A42-43, A47; State's Ex. 1 at 11:00:33). Probation Officer Walker pulled Swanson's shorts (and underwear) horizontally away from his body so that the officer could see the bag of contraband that Detective Randazzo said that he had felt in Swanson's groin area. (A44, A48). State's Ex. 1 at 11:00:47). Probation Officer Walker then reached inside Swanson's shorts and underwear and retrieved the suspected crack cocaine from his groin area, which was in a plastic bag. (A32; A44-45; A48-49; State's Ex. 1 at 11:00:50). The entire "look in" and "reach in" portion of the search took approximately ten seconds. (State's Ex. 1 at 11:00:47 to 11:00:57). At no time did Probation Officer Walker

[7] The other passenger vehicle that was parked near the store entrance remained parked. (State's Exhibit 1 at 11:00:34).

[8] In Detective Randazzo's experience, persons in custody have been able to slip out of their handcuffs while they have been in the back of a police vehicle and have been able to grab items that officers missed and discard the items, destroy them, or hide them. (A33-34). Sometimes handcuffed arrestees in the back of a police vehicle can still access contraband that officers may have missed during a search incident to arrest. (A37). Nevertheless, all arrestees are searched once they get to the New Castle County Police headquarters. (A34).

pull Swanson's pants or underwear down or expose any of Swanson's body parts to the public. (A45-46).[9]

Subsequently, Probation Officer Walker placed the contraband into an evidence bag. (A20). (A45-46). Then Sergeant Landis handed the evidence bag to Detective Randazzo. (A20; 45). Detective Randazzo placed the evidence bag in the front seat of his police vehicle and Swanson in the back seat. (A20).

Detective Randazzo transported both the suspected illegal drugs and Swanson to New Castle County Police headquarters. (A22, A36). The evidence bag was sealed, placed into evidence, sent to the laboratory for testing, and then returned to the NCCPD. (A22). The suspected illegal drugs seized from Swanson's person was sent to the Division of Forensic Science's laboratory to be analyzed by a forensic chemist. (A25; State's Ex. 2, 3). The chemist determined that the substance to be cocaine weighing 27.1458 grams. (A25; State's Ex. 2, 3).

[9] Both Detective Randazzo and Officer Walker testified that Walker did not pull down Swanson's shorts. (A32, 44).

ARGUMENT

I. SWANSON DID NOT PRESERVE THE ISSUE OF A VIOLATION OF THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND, IN ANY EVENT, SWANSON CANNOT SHOW PLAIN ERROR. THE OFFICERS CONDUCTED A LAWFUL SEARCH OF SWANSON INCIDENT TO ARREST AND DID NOT CONDUCT SUCH SEARCH UNREASONABLY WHEN ONE OF THEM RETRIEVED ILLEGAL DRUGS FROM SWANSON'S UNDERWEAR.

Question Presented

Whether officers conducted a reasonable search of Swanson incident to his lawful arrest when one of them searched his person, felt a hard object in the shape of a ball in his groin area that the officer believed to be consistent with the feel of crack cocaine, and another officer then performed a ten-second "look-in" and "reach in" search of Swanson's groin area to retrieve that object, which was a bag of cocaine.

Standard and Scope of Review

Under Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review. . . . "[10] When an appellant does not raise a claim of unreasonable search,[11] this Court may nonetheless review such questions for plain

[10] Supr. Ct. R. 8; *Pollard v. State*, 284 A.3d 41, 45 (Del. 2022).

[11] Here, Swanson's counsel complained about the search in his closing argument, but stated, "I understand it doesn't have any legal consequence on guilt or innocence." (A55).

error.[12] Under the plain error standard of review, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[13] "Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[14] This Court reviews questions of law and claims of constitutional violations *de novo*.[15]

Merits of Argument

Swanson argues that although the officers had a legitimate reason to arrest him and to perform the initial search, the subsequent "look-in"/"reach in" search was unreasonable according to the *Bell*[16] factors. Opening Br. at 7. He alleges that the officers' ten-second search of his groin area was "highly intrusive, demeaning, and embarrassing." Opening Br. at 8. Swanson contends that no exigency existed to make this "invasive" search in the middle of the Sunoco gas pump bay area reasonable. Opening Br. at 8-9. He asserts that no facts "revealed any possibility

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[12] Supr. Ct. R. 8; *Pollard*, 284 A.3d at 45.

[13] *Small v. State*, 51 A.3d 452, 456 (Del. 2012) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).

[14] *Wainwright*, 504 A.2d at 1100; *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981).

[15] *Zebroski v. State*, 12 A.3d 1115, 1119 (Del. 2010).

[16] *Bell*, 441 U.S. 520.

that Swanson had the intent or the potential to dispose of contraband before or while he was in the patrol car." Opening Br. at 10. Finally, he maintains that the officers should have taken Swanson's privacy into consideration because there were "several people present pumping gas" and the gas pump bay area was "in view of the public." Opening Br. 9. Swanson's claims fail.

A. This Court Should Refuse to Review Swanson's Previously Unraised Constitutional Arguments.

For this Court to consider Swanson's previously unraised claim, the interests of justice must require its review.[17] The fact that Swanson is raising a constitutional claim for the first time on appeal is of no moment. This Court has "previously refused to review constitutional arguments raised for the first time on appeal."[18] And, as this Court has noted, "[f]ailure to file a motion to suppress before trial 'shall constitute a waiver thereof, but the court for cause shown may grant relief from the waiver.'"[19] "Moreover, this Court generally declines to review suppression issues

[17] *Clark v. Clark*, 47 A.3d 513, 518 (Del. 2012) (citing *Russell v. State*, 5 A.3d 622, 627 (Del. 2010)).

[18] *Shawe v. Elting*, 157 A.3d 152, 168 (Del. 2017) (citing *Cassidy v. Cassidy*, 689 A.2d 1182, 1184–85 (Del. 1997) (other citations omitted)).

[19] *Mills v. State*, 2007 WL 4245464, at *4 (Del. Dec. 3, 2007) (quoting Super. Ct. Crim. R. 12(f)); *Walley v. State*, 1993 WL 78221, at *2 (Del. Mar. 17, 1993) ("An objection to the use of evidence upon the ground that it has been obtained in violation of constitutional rights must be made in advance of the trial by a motion to suppress.").

not raised below because, in "the absence of a motion to suppress and a pretrial suppression hearing, there is not an adequate record upon which to conduct an appellate review of the suppression claim."[20] In addition, this Court has expressed its concern over presenting arguments for the first time on direct appeal, stating, "[w]e place great value on the assessment of issues by our trial courts, and it is not only unwise, but unfair and inefficient, to litigants and the development of the law itself, to allow parties to pop up new arguments on appeal they did not fully present below."[21] The reason for this is clear:

> Opponents should have a fair chance to address arguments at the trial court. It is prudent for the development of the law that appellate courts have the benefits that come with a full record and input from learned trial judges. Thus, fair presentation facilitates the process by which the application of rights in an individual case affects others in other cases and society in general.[22]

Here, Swanson did not fairly present his claim of constitutional violations to the Superior Court. Rather than addressing the Rule 8 bar to his claim, Swanson

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[20] *Coffield v. State*, 2025 WL 85345, at *6 (Del. Jan. 14, 2025) ("This Court has held that in the absence of a motion to suppress and a pretrial suppression hearing, there is not an adequate record upon which to review [a] suppression claim."); *Loper v. State*, 2020 WL 2843516, at *2 (Del. June 1, 2020); *Bradley v. State*, 2019 WL 446548, at *3 (Del. Feb. 4, 2019) (quoting *Mills v. State*, 2007 WL 4245464, at *4 (Del. Dec. 3, 2007)) (cleaned up) (citing *Jones v. State*, 2005 WL 2473789, at *1 (Del. Aug. 22, 2005); *Tricoche v. State*, 525 A.2d 151, 154 (Del. 1987)).

[21] *DFC Global Corporation v. Muirfield Value Partners, L.P.*, 172 A.3d 346, 363 (Del. 2017).

[22] *Shawe v. Elting*, 157 A.3d 152, 169 (Del. 2017).

ignores it. Swanson has not pled, nor can he demonstrate, that the Superior Court committed plain error requiring review of his claim in the interests of justice. Consequently, this Court should decline review of Swanson's claim because he failed to present it to the Superior Court in the first instance.

B. The Search Was a Proper Search Incident to a Lawful Arrest and Was Reasonable.

The Fourth Amendment to the United States Constitution provides individual protection "against unreasonable searches and seizures."[23] The Fourteenth Amendment extends the protections afforded by the Fourth Amendment to the states.[24] "An individual's right to be free from unreasonable searches and seizures is violated when government authorities search, without a warrant, an area where the individual had a reasonable expectation of privacy."[25] It is well established, however, that a warrantless search of an individual conducted by officers incident to a lawful arrest is reasonable under the Fourth Amendment.[26] In particular, police

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[23] U.S. Const. Amend. IV.

[24] *Mapp v. Ohio*, 367 U.S. 643 (1961).

[25] *State v. Ellis*, 2009 WL 5176196, at *2 (Del. Super. Ct. Nov. 18, 2009); *State v. Robinson*, 2006 WL 1148477, at *3 (Del. Super. Ct. May 1, 2006) (citing *State v. Hughes*, 2003 WL 21213709, at *2 (Del. Super. Ct. May 6, 2003)). *But see Birchfield v. North Dakota*, 579 U.S. 438, 463 (2016) ("[O]nce placed under arrest, the individual's expectation of privacy is necessarily diminished."); *Maryland v. King*, 569 U.S. 435, 462 (2013).

[26] *Ellis*, 2009 WL 5176196, at *2; *State v. Doleman*, 1995 WL 339184, at *4 (Del. Super. Ct. Apr. 21, 1995) (citing *United States v. Robinson*, 414 U.S. 218, 235

officers are allowed to conduct a search incident to an arrest to remove weapons or "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction."[27] Moreover, so long as the arrest is lawful, Delaware law provides that officers may conduct a search of a person incident to arrest without a warrant.[28]

The officers here conducted a proper, reasonable search of Swanson's person, including his upper and lower body, his pockets, and his groin area from outside his garments, incident to a lawful arrest.[29] Detective Randazzo and Probation Officer Walker both testified that they arrested Swanson because he was in violation of his probation and had outstanding warrants. (A15, A26-27, A37, A41-42). Thus, the officers' arrest of Swanson was plainly proper because it was pursuant to a warrant.

(1973), *superseded by statute on other grounds as recognized by Commonwealth v. Pierre*, 893 N.E.2d 378 (Mass. App. Ct. 2008)); *Gustafson v. Florida*, 414 U.S. 260 (1973); *Chimel v. California*, 395 U.S. 752 (1969), *overruled in part by Arizona v. Gant*, 556 U.S. 332 (2009); *Rew v. State*, 622 A.2d 1097 (Del. 1993); *State v. Culver*, 288 A.2d 279 (Del. 1972); *Jarvis v. State*, 600 A.2d 38 (Del. 1991)).

[27] *Chimel*, 395 U.S. at 763; *Cannon v. State*, 2002 WL 188328, at *2 (Del. Jan. 31, 2002); *Traylor v. State*, 458 A.2d 1170, 1173 (Del. 1983). Maryland law, upon which Swanson relies in part, is in accord. *Paulino v. State*, 924 A.2d 308, 313 (Md.), *cert. denied*, 552 U.S. 1071 (2007).

[28] 11 *Del. C.* § 2303(1); *State v. Culver*, 288 A.2d 279 (Del. 1972); *State v. Haith*, 1999 WL 167824, at *2 (Del. Super. Ct. Mar. 5, 1999).

[29] *See King v. State*, 1993 WL 445484, at *1-2 (Del. Nov. 1, 1993) (holding that search of defendant's person, including his pocket in which arresting officer heard a rattle which, based upon his prior experience, sounded like a container with cocaine, was proper one incident to a lawful arrest).

(B3-5). And, when Detective Randazzo and other officers arrived at the Sunoco and saw Swanson, the search of his person incident to the warrant was entirely proper.[30] This search also comported with United States Supreme Court's holdings that describe a reasonable search incident to arrest as one involving "a relatively extensive exploration of the person."[31]

Although the officers searched Swanson incident to a lawful arrest, Swanson argues that they acted unreasonably by searching his groin area in a highly "intrusive, demeaning, and embarrassing" manner. Opening Br. at 7-8. But the circumstances justified the officers' search of Swanson's groin area and the manner in which they did it. When Detective Randazzo conducted his search of Swanson's groin area, he felt a hard object in the shape of a ball that he believed to be illegal narcotics based on his experience. (A16-17, A30-31). Detective Randazzo asked Probation Officer Walker to retrieve the object. (A17). Walker pulled back Swanson's shorts and underwear and was able to locate the concealed object without exposing Swanson's naked body to the public. (A44, 46, 48). Walker then reached

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[30] *See King*, 1993 WL 445484, at *2 (holding that search of defendant's person, including his pocket in which arresting officer heard a rattle which, based upon his prior experience, sounded like a container with cocaine, was proper one incident to a lawful arrest); *Chimel, 395 U.S. at 763.*

[31] *Robinson*, 414 U.S. at 227; *Terry v. Ohio*, 392 U.S. 1, 25 (1968). *See also Chimel*, 395 U.S. at 762-63 (finding that when an officer makes an arrest, it is reasonable for the arresting officer to search the arrestee to remove any weapons and to seize any evidence on the arrestee's person to prevent its concealment or destruction).

into Swanson's underwear and retrieved illegal drugs (cocaine) from Swanson's groin area. (A44, 48-49). Such a search would qualify as a "look-in" search as well as a "reach-in" search of Swanson.[32]

[32] "A look-in search, or visual body search, involves the manipulation of clothing for the visual inspection of the external genital area, rather than the internal genital area or body cavities, without the removal of clothing or touching." *Coates v. State*, 2025 WL 87957, at *3 (Md. Ct. Spec. App. Jan. 14, 2025) (citing *Faith v. State*, 213 A.3d 809, 834 (Md. Ct. Spec. App. 2019)). "A reach-in search involves the manipulation of clothing for the purpose of retrieving contraband without the removal of clothing or exposing the suspect's genital areas to others." *Coates*, 2025 WL 87957, at *3 (citing *Faith*, 213 A.3d at 834). *See also* 79 A.L.R.6th 631 (originally published in 2012) ("A 'reach-in' search has been defined as one that involves a manipulation of the arrestee's clothing such that the police are able to reach in and retrieve the contraband without exposing the arrestee's private areas."). *See also Allen v. State*, 13 A.3d 801, 809 (Md. Ct. Spec. App. 2011) ("[W]e hold that, regardless whether it is classified as a strip search, a 'reach-in' search or other search inside a person's clothing, which permits the officer to view a suspect's private areas, is not the type of search that automatically is allowed as a search incident to arrest. Rather, the analysis for a strip search incident to arrest applies, and the reasonableness of a reach-in search is to be determined by reference to the four factors set forth by the Supreme Court in *Bell*."). *Compare United States v. Williams*, 477 F.3d 974, 976–77 (8th Cir.) (holding that a "reach-in" search of a clothed subject is less severe than a "full-blown strip search"), *cert. denied*, 552 U.S. 906 (2007), and *Jenkins v. State*, 978 So.2d 116, 126–28 (Fla. 2008) (where police pulled boxer shorts away from defendant's waist to look for drugs and no body parts were exposed, the search was not a strip search), *with State v. Jenkins*, 842 A.2d 1148, 1156, 1158 (Conn. App. 2004) (characterizing a "reach-in" search as a type of strip search). *See also State v. Harding*, 9 A.3d 547 (Md. Ct. Spec. App. 2010) ("reach-in" searches may "flitter back and forth" between "the far end of the routine search incident continuum" and "a strip search requiring some incremental justification").

This Court has addressed the scope of a strip search (which is a more invasive type of search than the one conducted by the officers here) at a police station pursuant to a search warrant by adopting the test set forth in *Bell v. Wolfish*[33]:

> The test of reasonableness under the Fourth Amendment . . . . requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.[34]

Swanson's reliance on *Johnson* and the test articulated in *Bell* is misplaced, however. The test articulated in *Bell* to determine the reasonableness of inmate strip searches under the Fourth Amendment is inapplicable here because this case does not involve a strip search or a routine search of a defendant at the police station. Rather, the search of Swanson's person was a lawful search incident to arrest for a drug related crime and occurred after the officers had felt a foreign object in Swanson's groin area, as discussed above.

To the extent that the *Bell* factors apply generally to Fourth Amendment searches, not just strip searches, the further search of Swanson was also reasonable under the *Bell* factors.[35] Specifically, the search was reasonable under the Fourth

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[33] 441 U.S. 520.

[34] *Johnson v. State*, 1992 WL 151362, at *1 (Del. Jun. 5, 1992), *subsequent mandamus proceeding sub nom. In re Petition of Johnson*, 744 A.2d 987 (Del. 1999) (citing *Bell*, 441 U.S. at 559).

[35] *See Powell v. State*, 898 N.E.2d 328, 335 (Ind. Ct. App. 2008) (finding that the *Bell* factors apply generally to Fourth Amendment searches, not just strip searches).

Amendment given the scope of the search of Swanson, the manner in which it was conducted, the justification for initiating it, and the place in which it was conducted. Thus, the Superior Court did not commit plain error in admitting the evidence at trial.

(1) *The Scope of the Reach-In Search.*

The scope of the officers' search of Swanson's person incident to his arrest was justified by information that Detective Randazzo had received from the past proven reliable confidential informant about Swanson's possession of drugs as well as the detective's belief that he had felt illegal narcotics in Swanson's groin area during his search of Swanson's person. Detective Randazzo conducted a reasonable search of Swanson's groin area by searching the area outside his garments. (A16). In conducting his search, he felt a hard object in Swanson's groin area that he believed was crack cocaine. (A16-17, A29-31; State's Ex. 1 at 11:00:30).

After Detective Randazzo announced that he felt a hard object in Swanson's groin (A17, 30-31), Probation Officer Walker put on gloves and then pulled Swanson's pants horizontally away from Swanson's body (not down) so that he could reach into Swanson's shorts and underwear and grab the object that Detective Randazzo had identified (*i.e.*, illegal drugs). (A17, A19, A31-32, A43, A47-49). The "look-in" and "reach in" search took approximately ten seconds and did not expose Swanson's naked body to the public. (A44-46). Probation Officer Walker

was the only person who could see Swanson's groin area. (A44, 48). And, Probation Officer Walker had to look at Swanson's groin area to (1) visually confirm the presence of a foreign object (which was illegal drugs), and (2) reach down and efficiently remove the drugs. (A30-31, A38, A42, A44, A47-49).

It is undisputed that "intrusive searches must be supported by, at minimum, reasonable suspicion of concealment of weapons or contraband."[36] "Reasonable suspicion could arise from the offense of arrest itself or from the particularized facts and circumstances known to the arresting officer."[37] Here, as discussed in more detail under subheading 3, *infra* ("The Justification for Initiating the Search"), there was ample suspicion to support the officers' ten-second "look in" and "reach in" search. Based on these facts, the scope of the officers' search of Swanson's groin

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[36] *United States v. Parker*, 458 F. Supp. 3d 260, 265 (M.D. Pa. 2020), *aff'd*, 2023 WL 4117474 (3d Cir. June 22, 2023). *See Evans v. State*, 407 F.3d 1272, 1279 (8th Cir. 2005) ("[W]e are confident that an officer must have at least a reasonable suspicion that the strip search is necessary for evidentiary reasons."); *United States v. Clemons*, 2010 WL 597992, at *4 (W.D. Pa. Feb. 17, 2010), *aff'd on other grounds*, 499 Fed. Appx. 207 (3d Cir. 2012) (nonprecedential) ("[S]everal Circuit Courts have found 'that to be reasonable under *Wolfish*, strip . . . searches must be justified by at least a reasonable suspicion that the arrestee is concealing contraband. . . . '").

[37] *Parker*, 458 F. Supp. 3d at 265; *see Way v. County of Ventura*, 445 F.3d 1157, 1161 (9th Cir. 2006); *Mary Beth G. v. Chicago*, 723 F.2d 1263, 1271 n.7 (7th Cir. 1983) (citing *Salinas v. Breier*, 695 F.2d 1073 (7th Cir. 1982)); *Doleman*, 1995 WL 339184, at *5 (noting that several courts have cited *Robinson*, *Gustafson*, and *Chimel* to conclude that a strip search incident to a lawful arrest is permissible).

area to retrieve a foreign object that they reasonably (and correctly) believed to be illegal drugs was reasonable.[38]

(2) *The Manner In Which the Search Was Conducted.*

As previously noted, pursuant to Swanson's arrest, Detective Randazzo conducted a lawful search in which he felt a foreign object in Swanson's groin area--an object that Detective Randazzo believed to be illicit narcotics. (A16-17, A30-31). This search took place at approximately 11:00 a.m. (A27; A43; State's Ex. 1). Detective Randazzo asked Probation Officer Walker to retrieve the object. (A17). Probation Officer Walker pulled Swanson's shorts and underwear away from Swanson's body, horizontally, and visually inspected Swanson's groin area without exposing his naked body to the public. (A44, A46, A48). Probation Officer Walker then reached into Swanson's underwear and retrieved illegal drugs (cocaine) from Swanson's groin area. (A44, A48-49). These facts demonstrate that the manner in which the officers conducted the search of Swanson's groin area was reasonable.[39]

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[38] *Williams*, 477 F.3d at 976 (holding that a police search of defendant's genitals to obtain drugs stashed in the genital area was not unreasonably intrusive based on physical contact with defendant's genitals; some physical contact is permissible and unavoidable when police reach into suspect's pants to remove drugs the suspect has chosen to hide there*). See, e.g., United States v. Williams*, 209 F.3d 940, 942, 944 (7th Cir. 2000) (upholding the removal of crack cocaine from area of suspect's buttocks); *State v. Smith*, 464 S.E. 2d 45, 46 (N.C. 1995) (upholding the removal of cocaine from underneath suspect's scrotum).

[39] *Cuffey v. State*, 2022 WL 17177328 (Md. Ct. Spec. App. Nov. 23, 2022) (holding that reach-in search by officer incident to lawful arrest was "sexually invasive search" because officer moved the arrestee's underwear to retrieve illegal drugs, but

(3) *The Justification for Initiating the Search.*

Because the officers had a reasonable suspicion that Swanson was in possession of drugs on his person, their reach-in search of Swanson's groin area was justified. It is undisputed that the officers arrested Swanson for a violation of probation (Opening Br. at 3) and for outstanding warrants that included charges for possession and distribution of cocaine. (A15, A26-27, A37, A41-42; B3). It is also undisputed that Detective Randazzo conducted a lawful initial search of Swanson incident to a lawful arrest. (Opening Br. at 6-7; A38). Detective Randazzo also had prior knowledge from a past proven reliable confidential informant that Swanson was in possession of crack cocaine. (A28; B3-4). And, during the initial search, Detective Randazzo felt, in Swanson's groin area, a hard object that he believed to be illegal drugs. (A16-17). Detective Randazzo notified the other officers about his discovery. (A42). Officer Walker conducted a "look in" search by pulling back Swanson's shorts and was able to see the object that Detective Randazzo had identified without exposing Swanson's naked body to the public.

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search was based on reasonable, articulable suspicion that arrestee possessed drugs, and search was conducted next to officer's vehicle behind rear driver's side door in public alleyway off residential street); *United States v. Gordon*, 2008 WL 3540007, at *3 (D. Utah Aug. 2008) (holding that search of arrestee was reasonable where police pulled back arrestee's pants away from his body to see the drugs and then retrieved package of drugs from on top of genitals, arrestee was known to carry drugs in his groin area, police felt abnormal bulge upon pat-down search, and search was conducted in the dark at 1:30 a.m. on shoulder of freeway on passenger side of car).

(A17, A19, A30-31, A42-44, A46-48). Upon seeing the contraband, Officer Walker conducted a "reach in" and retrieved the illegal drugs (cocaine) from Swanson's groin area. (A44, 48-49). Because both officers had reasonable suspicion that Swanson had hidden illegal drugs in his underwear, the officers were justified in conducting the reach-in search of Swanson's groin area.[40]

The officers' search of Swanson was lawful also under the plain touch doctrine, which holds that officers may seize contraband discovered during the course of a valid search—through the sense of touch—provided that the presence of contraband is "immediately apparent" to them.[41] Here, police officers observed Swanson conduct what appeared to be a hand-to-hand drug transaction and then drive to the Sunoco gas station. (B4). When Detective Randazzo conducted a search of Swanson, the detective's experience led him to immediately discern that the hard object he felt through Swanson's clothes in his groin was drugs. (A16-17, A30-31).

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[40] *United States v. Simpson*, 416 Fed. Appx. 390, 392 (5th Cir. 2011) (holding that officer's reach in from bottom of defendant's shorts to retrieve bag of cocaine did not render the search unreasonable; search did not unreasonably infringe on defendant's privacy interests when balanced against the legitimate needs of the police to seize the contraband Simpson carried on his person).

[41] *Minnesota v. Dickerson*, 508 U.S. 366, 375–76 (1993) ("If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons; if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain-view context.").

Because the detective could discern the nature of the drugs simply by feeling Swanson's outer clothing, the officers' search was reasonable under the plain touch doctrine, and the seizure of the illegal drugs as evidence was therefore lawful.[42]

Although the State is not aware of any Delaware cases addressing a "look in" or "reach in" search like the one that Officer Walker conducted on Swanson at the time of his arrest,[43] Delaware cases discussing more intrusive strip searches support the conclusion that this search was reasonable. For example, in *State v. Doleman*, the Superior Court held that "law enforcement officers may conduct a strip search incident to a lawful arrest provided there is a reasonable suspicion that the arrestee is concealing weapons or other contraband beneath his or her clothing."[44] There, the court emphasized "that the custodial search incident to arrest must be reasonable"[45] and the standard usually requires, at a minimum, that "the facts upon which an

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[42] *Hunter v. State*, 783 A.2d 558, 562 (Del. 2001) (finding that officer's seizure of illegal drugs based on reasonably restrictive pat down of suspect, sensory stimulating touch, and officer's experience as a narcotics agent was reasonable); *Mosley v. State*, 2000 WL 275574, at *2 (Del. Feb. 29, 2000) (holding that after patting down suspect, officer had probable cause to seize plastic bag of crack cocaine from suspect's bra based on officer's experience and knowledge regarding packaging of drugs and on plain sight and plain touch of drugs in bra).

[43] The State notes that "look in" and "reach in" searches are less intrusive than strip searches (where an arrestee must disrobe) and cavity searches (where officers expose an arrestee's body cavities and/or manipulate them).

[44] *Doleman*, 1995 WL 339184, at *7.

[45] *Id*.; *Mary Beth G. v. City of Chicago*, 723 F.2d 1263, 1273 (7th Cir. 1983) (quoting *Delaware v. Prouse*, 440 U.S. 648, 654 (1979) (footnotes omitted)).

intrusion is based be capable of measurement against 'an objective standard,' whether this be probable cause or a less stringent test."[46] With more intrusive searches, the governmental authorities must demonstrate "probable cause for believing that the search will uncover the objects for which the search is being conducted."[47]

Here, the officers conducted a search of Swanson's groin area because he was arrested for possession and distribution of drugs and during Detective Randazzo's initial search of Swanson, he felt a hard object that he believed was crack cocaine. (A16-17, A30-31; B2). In addition, Detective Randazzo had received a tip that Swanson was in current possession of crack cocaine. (A28; B3-4). Given that the officers lawfully arrested Swanson and that the detective possessed a reasonable suspicion that Swanson was concealing illegal drugs in his groin area, a strip search would have been authorized under the holding in *Doleman*. Moreover, the "look in"/"reach in" search was reasonable as a less intrusive search than the strip search conducted in *Doleman* (or a visual body cavity search) because Swanson did not have to remove any clothing. See n. 25, *supra*.

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[46] *Id*.

[47] *Id*. The Superior Court limited its holding to strip searches that require the arrestee to remove his or her clothing and did not address visual or physical body cavity searches. *Id*., at *7, n.3.

Similarly, the search of Swanson qualifies as reasonable based on this Court's holding in *Jenkins v. State*.[48] There, this Court found that the facts of the case were more similar to *Doleman* than to *State v. Haith*.[49] The Delaware Superior Court has noted that:

> *Jenkins* stands for the proposition that where the facts at issue are most analogous to those in *Doleman*, the question to consider is whether there is reasonable suspicion that an arrestee is concealing weapons or other contraband beneath his or her clothing. Conversely, if the facts at issue are most analogous to those in *Haith*, where a defendant is subject to a strip search involving a visual cavity inspection, the question to consider is whether an "emergency" situation exists to negate the warrant requirement.[50]

The officers in *Jenkins* had reason to suspect that the defendant was concealing drugs because Jenkins had been arrested for a drug related offense and his clothing reeked of a strong marijuana odor.[51]

The officers in Swanson's case had reason to suspect that he was concealing drugs because, like Jenkins, Swanson was arrested on a drug charge. In addition, the search pursuant to Swanson's arrest revealed a hard object in his groin area that Detective Randazzo believed to be crack cocaine. (A16-17, A30-31). Also, the officers in Swanson's case had a tip from a past proven reliable confidential

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[48] *Jenkins v. State,* 970 A.2d 154, 160 (Del. 2009).

[49] *State v. Haith,* 1999 WL 167824 (Del. Super. Ct. Mar. 5, 1999).

[50] *State v. Ellis*, 2009 WL 5176196, at *5 (Del. Super. Ct. Nov. 18, 2009).

[51] *Jenkins*, 907 A.2d at 160.

informant that Swanson was in possession of illegal drugs (A28; B3-4), and Detective Randazzo thought that he saw Swanson attempt to throw something from his hand when he was exiting his vehicle. (State's Ex. 1 at 10:59:30). After a "look in" search, Probation Officer Walker conducted a "reach in" search and confirmed that Swanson had indeed hidden illegal drugs in his underwear. (A42-44).

This case is distinguishable from *State v. Haith*.[52] In *Haith*, the Superior Court invalidated a strip search and body cavity search of an arrestee after a routine traffic stop showed that he had been driving with a suspended or revoked driver's license.[53] The court there found because of the "high level of intrusiveness" that a strip search with a body cavity search poses, the officers should have obtained a warrant based on probable cause.[54] The court, citing and quoting *Mary Beth G. v. Chicago*,[55] noted that "the feelings of humiliation and degradation associated with being forced to expose one's nude body to strangers for visual inspection cannot be disputed."[56] Here, however, the present case is more similar to *Doleman* than to *Haith*, as (i) the officers had strong reasons to believe that Swanson was concealing drugs and (ii) the officers did not subject Swanson to a strip search or a body cavity search.

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[52] 1999 WL 167824 (Del. Super Mar. 5, 1999).

[53] *Id*., at *8.

[54] *State v. Haith*, 1999 WL 167824, at *8 (Del. Super. Ct. Mar. 5, 1999).

[55] 723 F.2d 1263 (7th Cir. 1983).

[56] *Id*., at *7 (citing *Mary Beth G.*, 723 F.2d at 1263).

(4) ***The Place in Which the Search Was Conducted.***

The officers arrested and searched Swanson at a Sunoco gas station located on Maryland Avenue. (A13, 31-32, 35, 47). After placing Swanson under arrest, Detective Randazzo moved Swanson from his car to the paved area between the parallel gas pumps to conduct his search of Swanson's person. (A31-32; State's Ex. 1 at 10:59:22-11:00:37). While Detective Randazzo conducted his initial search, there was a man on a motorcycle at one of the gas pumps who subsequently left during the search; a civilian truck that pulled up to the store, parked outside the entrance, and then left; a civilian car that pulled up to the nearby gas pump; and two unoccupied parked civilian cars located away from the gas pumps and the store. (State's Ex. 1 at 10:59:31-11:00:35). Probation Officer Walker conducted his ten-second search of Swanson at the same location. (A47; State's Ex. 1 at 11:00:35-11:01:27).

Contrary to Swanson's factual assertions, there were not several people present who were pumping gas at the time when the officers searched Swanson, nor were there people going in and out of the store. In fact, when the officers conducted the "look in" and "reach in" search, there was only one person (other than police personnel) at the gas pumps and one civilian truck parked near the entrance to the store who subsequently left. (State's Ex. 1 at 11:00:47-11:00:57). Although the Sunoco gas station is located on Maryland Avenue, which is a busy street (A47),

there did not appear to be a lot of traffic passing by the gas station when the officers searched Swanson. (State's Ex. 1 at 11:01:24-11:01:36; 11:02:12-11:02-18; 11:02:28-11:02:36; 11:02:47-11:02:50; and 11:02:56-11:02:59). And, during the search, Swanson was not facing Maryland Avenue. (State's Ex. 1 at 10:59:40-11:01:21). In addition, the street is a significant distance from where the search occurred. State's Ex. 1 at 11:01:25). Thus, the search of Swanson's groin area, which did not display his naked body to the public and which occurred in a non-busy gas station, was reasonable.[57]

Swanson's principal argument on this appeal is that "no "exigency existed such that an invasive search, conducted at the scene of the arrest, was reasonable."

[57] *See Williams*, 477 F.3d at 977 (holding that officers took sufficient precautions to protect defendant's privacy before seizing contraband from defendant's underwear by taking him from public street to more private precinct parking lot that was partially secluded and facts showed that no vehicles entered the lot during the search and no one besides other police officers were within eyesight of the brief search); *State v. Jenkins*, 842 A.2d 1148, 1151, 1158 (Conn. App. 2004) (holding that reach-in search was reasonable where police searched suspect on side of a restaurant, out of public view, by pulling pants and underwear away from suspect's body to retrieve drugs); *Peroceski v. Tarr*, 2009 WL 3202463, at *3 (D. Minn. Sep. 30, 2009) (holding that 30 second reach-in search for drugs in clothed arrestee's groin area that did not display suspect's genitals to onlookers was permissive because police took steps to diminish potential invasion of suspect's privacy); *United States v. Ashley*, 37 F.3d 678, 682 (D.C. Cir. 1994) (holding a search was reasonable in which police officer removed bag of drugs from suspect's underwear, where officer followed suspect from public bus station to side of station on street outside, and stood in front of suspect during search); *Smith*, 464 S.E.2d at 46 (upholding reach-in search on public roadway where officer used himself and car door to shield suspect from public view).

Opening Br. at 7 (quoting *Paulino*, 924 A.2d at 317-18). To attempt to support this argument, Swanson mistakenly argues that no facts showed any possibility that he had the intent or the potential to dispose of contraband before or while he was in the patrol car. Opening Br. at 7. But the facts here demonstrate otherwise. Once Detective Randazzo had handcuffed Swanson, he told a nearby officer that when Swanson was exiting the vehicle, it looked like he had possession of something in his hand, but then he tossed it away. (State's Ex. 1 at 10:59:30). Detective Randazzo then asked Swanson what he had in his hand, and Swanson replied that nothing was in his hand. (State's Ex. 1 at 10:59:40). Detective Randazzo asked Swanson what he had thrown, and Swanson said he did not throw "nothing." (State's Ex. 1 at 10:59:42). These facts suggest that Swanson had already tried to dispose of something before he was even placed into custody. Given this fact, an immediate search and retrieval of the contraband was justified.[58] Moreover, Detective Randazzo

[58] *Cupp v. Murphy*, 412 U.S. 291, 295 (1973) (stating that "when an arrest is made, it is reasonable for a police officer to expect the arrestee to use any weapons he may have and to attempt to destroy any incriminating evidence then in his possession."); *United States v. Robinson*, 414 U.S. 218, 234 (1973) ("The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial.")(quoting *Chimel*, 395 U.S. at 763); *Allen v. State*, 13 A.3d 801, 810 (Md. Ct. Spec. App. 2011) ("[When a person is arrested for drug dealing, the nature of the offense provides reasonable suspicion to believe that the arrestee is concealing drugs on his or her person."); *Moore v. State*, 7 A.3d 617, 631 (Md. Ct. Spec. App. 2010) ("[I]t is 'well known in the law enforcement community, and probably to the public at large, that drug traffickers often secrete drugs in body cavities to avoid detection.'"). *See United States v.*

had received a tip from the past proven reliable confidential information that Swanson was in possession of crack cocaine (A28; B3-4), and the detective felt the incriminating nature of the hard ball during his search of Swanson's groin area that he believed was crack cocaine. These facts support a finding that the search of Swanson's groin area was lawful.[59]

Swanson also points out that he was handcuffed during the search, so he was not in a position to conceal or dispose of evidence. Opening Br. at 5, 7-8, 9. But, as Detective Randazzo testified, he had experienced times when arrestees had slipped their handcuffs and were able to access evidence in an attempt to discard or hide it. (A33-34). Detective Randazzo also testified that in his experience handcuffed arrestees had been able to slip their handcuffs (or not) and still reach into their pockets or bras and access contraband that the officers may have missed during a search incident to arrest. (A37). "While the potential for destruction of evidence is

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Barnes, 506 F.3d 58, 62 (1st Cir. 2007) (strip search justified given arrest for drug trafficking crime); *Jenkins*, 842 A.2d at 1151 (nature of offense of drug distribution provides reasonable suspicion to believe arrestee carrying contraband). *See also People v. Hall*, 886 N.E.2d 162, 166 (N.Y. 2008) (reasonable suspicion justifying visual body cavity search of arrestee may be found by consideration of "'the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest'") (quoting *Weber v. Dell*, 804 F.2d 796, 802 (2d Cir. 1986), *cert. denied*, *subsequent proceeding sub nom. County of Monroe v. Weber*, 483 U.S. 1020 (1987)).

diminished when a suspect is in custody, it is not completely eliminated, and it was not unreasonable for the officers to assume the initiative by seizing the contraband that [the defendant] secreted in his underwear."[60]

Swanson also suggests that someone could have easily sat with him in the back of the patrol car while he was handcuffed and transported to the police station. But just because an alternative method of accomplishing the search is possible does not make the search that the officers here conducted less reasonable. "A creative judge, engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished."[61] "[T]he real question is not what 'could have been achieved,' but

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[60] *United States v. Gordon*, 2008 WL 3540007, at *4 (D. Utah Aug. 13, 2008) (quoting *Williams*, 477 F.3d at 976). *See United States v. Shakir*, 616 F.3d 315, 320–21 (3d Cir. 2010) ("[I]t is not true that by handcuffing a suspect, the police instantly and completely eliminate all risks that the suspect will flee or do them harm. . . . Handcuffs are a temporary restraining device; they limit but do not eliminate a person's ability to perform various acts. They obviously do not impair a person's ability to use his legs and feet, whether to walk, run, or kick. Handcuffs do limit a person's ability to use his hands and arms, but the degree of the effectiveness of handcuffs in this role depends on a variety of factors, including the handcuffed person's size, strength, bone and joint structure, flexibility, and tolerance of pain. Albeit difficult, it is by no means impossible for a handcuffed person to obtain and use a weapon concealed on his person or within lunge reach, and in so doing to cause injury to his intended victim, to a bystander, or even to himself. Finally, like any mechanical device, handcuffs can and do fail on occasion.") (citing *United States v. Sanders*, 994 F.2d 200, 209 (5th Cir. 1993)) (internal citations omitted).

[61] *Williams*, 477 F.3d at 976 ("But the existence of 'less intrusive means' does not, by itself, make a search unreasonable.") (quoting *United States v. Sharpe*, 470 U.S.

whether the Fourth Amendment requires such steps. . . . . The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive' means."[62] Given the circumstances here, the ten-second "reach in" search to retrieve the drugs that Swanson had concealed in his groin area was fully justified.

675, 687 (1985)); *Illinois v. Lafayette*, 462 U.S. 640, 647–648 (1983); *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973).

[62] *Lafayette*, 462 U.S. at 647.

CONCLUSION

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

Respectfully submitted,

/s/ Julie M. Donoghue

Kenneth J. Nachbar (#2067)
Julie (Jo) M. Donoghue (# 3724)
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

Date: May 19, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH SWANSON,	§	
	§	No. 364, 2024
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

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Date: May 19, 2025

/s/ Julie M. Donoghue
Julie (Jo) M. Donoghue (# 3724)
Deputy Attorney General