



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALTON CANNON, )  
)  
Defendant Below- )  
Appellant, ) No. 425, 2025  
)  
) ON APPEAL FROM  
v. ) THE SUPERIOR COURT OF THE  
) STATE OF DELAWARE  
STATE OF DELAWARE, ) ID Nos. 1704012804,  
) 2111008670  
)  
Plaintiff Below- )  
Appellee. )

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
DELAWARE IN AND FOR NEW CASTLE COUNTY

---

**REPLY BRIEF OF *AMICUS CURIAE***

**COLLINS PRICE WARNER  
WOLOSHIN**

Patrick J. Collins, ID No. 4692  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801  
(302) 655-4600

*Amicus Curiae*

Dated: April 28, 2026

**TABLE OF CONTENTS**

TABLE OF CITATIONS ..... ii

ARGUMENT ..... 1

**I. THE SUPERIOR COURT ERRED IN FINDING THAT THE GPS TRACKING REQUIREMENT IN 11 DEL C. § 4121(u) APPLIES TO A SUBSEQUENT SENTENCE AFTER THE OFFENDER HAS COMPLETED THE PROBATION FOR THE UNDERLYING SEX OFFENSE ..... 1**

*The plain meaning of “their probation” in 11 Del. C. § 4121(u) is the probationary sentence for the case that required placement on the sex offender registry..... 1*

*As currently interpreted, the statute leads to unreasonable and absurd results..... 4*

*Section 4121(u), as currently interpreted in Delaware, is unconstitutional as applied to Mr. Cannon and similarly situated probationers ..... 9*

The plain error standard of review is inapplicable to this claim 9

GPS-tracking for subsequent, unrelated offenses is unconstitutional ..... 11

CONCLUSION ..... 16

**TABLE OF CITATIONS**

**Cases**

*Doe v. Coupe*, 143 A.3d 1266 (Del. Ch. 2016)..... 8, 11, 12, 13

*Grady v. North Carolina*, 575 U.S. 306 (2015)..... 11

*Snyder v. Andrews*, 708 A.2d 237 (Del. 1998) ..... 10, 11

*State v. Holden*, 54 A.3d 1123 (Del. Super. 2010) ..... 13

*Turnbull for Turnbull v. Fink*, 644 A.2d 1322 (Del. 1994) ..... 10

*Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995)..... 11

**Rules**

Cal. Rules of Court 8.1105 ..... 9

**Statutes**

11 *Del. C.* § 4120A(e)..... 5

11 *Del. C.* § 4121(e)(2)(a)..... 2

Fla. Stat. § 948.063 ..... 7

The undersigned court-appointed *amicus curiae* responds to the State's answering brief as follows.

**ARGUMENT**

**I. THE SUPERIOR COURT ERRED IN FINDING THAT THE GPS TRACKING REQUIREMENT IN 11 DEL. C. § 4121(u) APPLIES TO A SUBSEQUENT SENTENCE AFTER THE OFFENDER HAS COMPLETED THE PROBATION FOR THE UNDERLYING SEX OFFENSE.**

*The plain meaning of “their probation” in 11 Del. C. § 4121(u) is the probationary sentence for the case that required placement on the sex offender registry.*

The State urges this Court to conclude that the General Assembly intentionally declined to constrain the definition of “their probation” to mean just the registry-triggering probation. The State finds it “telling” that the General Assembly could have included limiting language but did not.<sup>1</sup> In the State's view, that constituted a deliberate choice by the General Assembly.<sup>2</sup>

The debate on the bill tends to establish otherwise, as discussed in the Opening Brief. No representative or senator mentioned subsequent offenses. It did not seem to occur to any representative or senator that an offender would commit an offense in the future. Indeed, the sponsor was of the impression that very few Tier III sex offenders are released from prison.<sup>3</sup> A

---

<sup>1</sup> Ans. Br. at 11.

<sup>2</sup> Ans. Br. at 9-11.

<sup>3</sup> A85.

senator mused that GPS tracking may be a way to get some of the unnecessary prison population out of prison while still providing protection for the public.<sup>4</sup>

These comments, coupled with the lack of any discussion about future offenses, undermine the State's argument that extending § 4121(u)'s reach to future offenses was a deliberate choice by the legislature.

In the opening brief, *Amicus* asserted that if an offender was to be GPS-tracked for any future offense, the General Assembly would have so specified, as it did in 11 *Del. C.* § 4121(e)(2)(a). That subsection provided that any Tier III offender convicted of any subsequent offense (other than a motor vehicle offense) or who violates their probation must wait 25 years from the conclusion of that subsequent sentence to apply for tier reduction.<sup>5</sup> This subsection constitutes evidence that if the General Assembly wanted to include "any subsequent offense" language in § 4121(u), it would have done so.

The State disagrees, mainly on the basis that GPS-tracking is not a punishment.<sup>6</sup> It is not clear why that matters. GPS-tracking is an additional

---

<sup>4</sup> A74.

<sup>5</sup> 11 *Del. C.* § 4121(e)(2)(a).

<sup>6</sup> Ans. Br. at 14-15.

statutorily imposed condition of probation. Whether it qualifies as punishment or as an intrusive additional condition is beside the point.

The State also points to various other subsections of the statute which link new offenses back to the original sex offense, such as the subsection requiring community notification upon conviction for any qualifying sex offense.<sup>7</sup> According to the State, this demonstrates that “the legislature knew how to craft language linking a matter back to the original qualifying sex offense.”<sup>8</sup>

It appears that the State and *Amicus* are arguing two sides of the same coin: finding other provisions in the statute to support their plain meaning interpretation of § 4121(u). This may or may not be a useful exercise. It is likely more productive to focus on the words of the subsection. More particularly, it is important to note that the General Assembly did not use the word “any” in place of “their.” Nor did the drafters pluralize the word “probation.” Nor did the drafters insert “or any subsequent probation” after “their.”

The State points out that the dictionary meaning of “their” is “his or her,” according to Merriam-Webster.<sup>9</sup> But that is the second-listed

---

<sup>7</sup> Ans. Br. at 15-16.

<sup>8</sup> Ans. Br. at 16.

<sup>9</sup> Ans. Br. at 11.

definition. The first is “of or relating to themselves especially as possessors, agents, or objects of an action.”<sup>10</sup> A person cannot possess something that does not and may not ever exist. As such, the dictionary definition of their establishes that “their probation” means the only one they have for certain, which is the probation after the qualifying sex offense.

The common-sense, practical plain meaning of “their probation” is the probation for an offense within the sex offender registry statute itself.

***As currently interpreted, the statute leads to unreasonable and absurd results.***

Tier III Offender A completes probation for his qualifying offense. The GPS monitor comes off. He is then subject to reporting requirements but otherwise is never monitored by state authorities for the rest of his life. Tier III Offender B completed probation for his sex offense, and the monitor came off years ago. But he is convicted of shoplifting and sentenced to one year in prison suspended for Level 2 probation. *That* offender, as the statute is currently interpreted, will be GPS-monitored for the next year.

That is the epitome of an absurd and unreasonable result. The General Assembly’s intent was to ensure that the most serious sex offenders are tracked if and when they get out of prison. To leave them untracked after

---

<sup>10</sup> <https://www.merriam-webster.com/dictionary/their>

they complete their probation and then re-track them upon the happenstance of an unrelated probation, as happens currently, is the result of an unreasonable and absurd interpretation of the statute.

One of the other requirements for sex offenders is that they must undergo sex offender treatment:

Each sex offender sentenced by a court for an offense committed on or after January 1, 2010, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the Department of Correction, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification.<sup>11</sup>

But no one interprets that subsection to mean that a sex offender who commits an unrelated, subsequent offense – such as shoplifting or drug possession – is required to undergo sex offender treatment again. In contrast to the reasonable interpretation of § 4120A, the way § 4121(u) is currently interpreted is unreasonable.

The State contends that statute does not lead to unreasonable or absurd results because “while on probation, an individual has a diminished expectation of privacy, and they regain a normalized expectation of privacy when probation ends.”<sup>12</sup> It is true that all probationers have a diminished expectation of privacy, but it does not inform the question. GPS monitoring

---

<sup>11</sup> 11 *Del. C.* § 4120A(e).

<sup>12</sup> *Ans. Br.* at 17-18.

for an unrelated offense is an additional statutory sanction that other probationers are not required to endure.

The State further asserts that GPS monitoring during an unrelated probation sentence is “a shift in the balancing of individual privacy interest and legitimate government interest.”<sup>13</sup> That argument is flawed for a couple reasons. First, there is no balancing of interests involved. As currently interpreted by Probation, GPS monitoring is mandatory. Second, the government interest is not legitimate. The government cannot reasonably justify monitoring an offender for an unrelated offense after not monitoring that person for years or decades.

The State appears to misunderstand the discussion in the opening brief regarding Florida’s GPS monitoring statute. The State argues that since both Florida and Delaware require GPS monitoring for subsequent probationary sentences, Delaware’s interpretation cannot be unreasonable.<sup>14</sup> But the Florida statute spells out the GPS requirement with specificity: if a top-tier sex offender is on probation for “any felony offense” and then violates that probation, and if the court imposes another probation as a result, “the court

---

<sup>13</sup> Ans. Br. at 18.

<sup>14</sup> Ans. Br. at 19.

must order electronic monitoring as a condition of the subsequent term of probation.”<sup>15</sup>

Contrary to the State’s assertion, the Florida statute provides an example of a statute that clearly imposes GPS monitoring on certain probation violators. Delaware, by contrast, interprets its statute in a manner found nowhere in the statutory text.

The State next contends that the legislative history of § 4121(u) is “thin evidence” of the General Assembly’s intent.<sup>16</sup> It is true that the debate was not robust. As discussed previously, however, what debate there was tends to establish that the General Assembly did not intend GPS monitoring to be statutorily required for future offenses.

Next, the State asserts that because Probation has interpreted § 4121(u) the way it has for so long, this Court should accept Probation’s interpretation as the correct one.<sup>17</sup> Although the State invokes a legitimate doctrine of statutory interpretation, it has no application here. For an agency’s interpretation to be given any weight, it must be practical and plausible.

---

<sup>15</sup> Fla. Stat. § 948.063.

<sup>16</sup> Ans. Br. at 20.

<sup>17</sup> Ans. Br. at 22-25.

Probation’s interpretation of § 4121(u) is not the result of a deliberative and thoughtful process. In the *Doe v. Coupe* litigation, the Director testified that he has “never given great thought to...whether it makes sense or doesn’t make sense or whether we should or shouldn’t [monitor all Tier III sex offenders using GPS]. It’s a requirement, therefore, we do it.”<sup>18</sup> An agency policy that the director admitted was not given much thought is hardly worth much weight by this Court.

The State further argues that since the General Assembly has not amended § 4121(u) during the years in which Probation’s interpretation has been in place, “the only logical conclusion is that the legislature considers Probation to be correctly implementing Section 4121(u).”<sup>19</sup> The State’s conclusion may be logical, but it is not the only one. It is equally plausible that this issue has never come up before the General Assembly since enactment. And, because this issue is capable of repetition yet evades review, no decision of this Court has ever flagged the interpretation of § 4121(u) for the General Assembly’s review.

As to the State’s discussion of other state statutes and their similarity or dissimilarity to Delaware’s, *Amicus* will largely rely on the Opening

---

<sup>18</sup> *Doe v. Coupe*, 143 A.3d 1266, 1270 (Del. Ch. 2016).

<sup>19</sup> Ans. Br. at 24.

Brief. *Amicus* acknowledges that a recent California cases interpret the state GPS-monitoring statute to apply to any future parole.<sup>20</sup> Notably, all three decisions cited by the State are designated unpublished/noncitable by the respective California appellate courts. They may not be relied upon or cited in California and apply only to the parties.<sup>21</sup> As such, it is unclear whether the statute is applied uniformly across the state. The California Supreme Court has not ruled one way or the other.

The State's arguments are insufficient to overcome what is obvious: the Superior Court and Probation's interpretation of § 4121(u) leads to absurd and unreasonable results. This Court should reverse the denial of Mr. Cannon's motion to remove the GPS tracker as a condition of his probation.

***Section 4121(u), as currently interpreted in Delaware, is unconstitutional as applied to Mr. Cannon and similarly situated probationers.***

The plain error standard of review is inapplicable to this claim.

The State argues that this claim must be reviewed for plain error because Mr. Cannon did not raise it *pro se* in Superior Court.<sup>22</sup> Nor, argues the State, did this Court identify it as a point to be addressed.<sup>23</sup>

---

<sup>20</sup> Ans. Br. at 28-29.

<sup>21</sup> Cal. Rules of Court 8.1105.

<sup>22</sup> Ans. Br. at 35, 37-40.

<sup>23</sup> Ans. Br. at 35, n.128.

*Amicus* respectfully disagrees with the State’s position that Court-appointed *amici* are constrained to only make arguments that the appellant previously raised. An *amicus* granted leave by this Court to file a brief is constrained to the issues raised in the appellant’s brief and may not raise additional or separate issues.<sup>24</sup> That is not the case with court-appointed *amici*.

In *Snyder v. Andrews*,<sup>25</sup> a defendant filed a *pro se* petition for a writ of mandamus, asserting that the Department of Corrections improperly calculated good time on his two sentences. Complicating matters was the fact that one sentence was imposed before the Truth-in-Sentencing Act and one was imposed after.<sup>26</sup> As a matter of statutory interpretation, the Superior Court agreed with Andrews and issued the writ to DOC.<sup>27</sup>

The State appealed. Andrews did not file an answering brief. This Court appointed *amicus curiae* to support Andrews’ position.<sup>28</sup> *Amicus* raised a constitutional ex post facto argument not raised in the proceedings below.<sup>29</sup> This Court expressly considered *amicus*’ ex post facto argument –

---

<sup>24</sup> *Turnbull for Turnbull v. Fink*, 644 A.2d 1322, 1324 (Del. 1994).

<sup>25</sup> 708 A.2d 237 (Del. 1998).

<sup>26</sup> *Id.* at 240.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

although rejecting it – without any reference to plain error or any standard of review.<sup>30</sup>

GPS-tracking for subsequent, unrelated offenses is unconstitutional.

In *Doe v. Coupe*, the Chancery Court held that, under the special needs doctrine, GPS monitoring of Tier III sex offenders serving the probationary portion of their sentences did not violate the Fourth Amendment.<sup>31</sup> The United States Supreme Court has held that nonconsensual GPS monitoring of probationers was a search within the meaning of the Fourth Amendment.<sup>32</sup> Consequently, the *Doe* Court applied the special needs doctrine, which considers:

- The nature of the privacy interest upon which the search at issue intrudes;
- The character of the intrusion complained of; and
- The nature and immediacy of the government concern at issue and the efficacy of the means for meeting it.<sup>33</sup>

In discussing the first factor, the Chancery Court looked at the nature of the privacy interest as significantly diminished because the plaintiffs all traded additional prison time for probation. The Court reasoned that because

---

<sup>30</sup> *Id.* at 248.

<sup>31</sup> *Doe v. Coupe*, 143 A.3d 1266, 1274 (Del. Ch. 2016).

<sup>32</sup> *Grady v. North Carolina*, 575 U.S. 306, 310 (2015).

<sup>33</sup> *Doe* at 1274, citing, *Vernonia School District 47J v. Acton*, 515 U.S. 646, 654-660 (1995).

probation is “an established variation on imprisonment,” the *Doe* plaintiffs did not have a legitimate expectation of privacy.<sup>34</sup>

This fundamental tradeoff does not exist for future, unrelated offenses. All probation, of course, is suspended prison time. But the search – here, GPS monitoring – becomes unreasonable when it bears no relationship whatsoever to the original offense.

The State disagrees but also misapprehends the argument: “Cannon’s argument seems to be that, in the absence of probation, a Tier III sex offender has a reasonable expectation of privacy.”<sup>35</sup> That is true but misstates the point. The point is that when subsequent GPS monitoring has nothing to do with the original sex offense, the intrusion becomes unreasonable. Or to put it another way, the expectation of privacy free from GPS monitoring is legitimate when the monitoring is for an unrelated offense.

As to the character of the privacy intrusion, the State asserts that the holding in *Doe* applies with equal force to Mr. Cannon. As between an original and subsequent offender, The State asserts that the intrusion is no different.<sup>36</sup>

---

<sup>34</sup> *Id.* at 1275.

<sup>35</sup> Ans. Br. at 41.

<sup>36</sup> Ans. Br. at 42-43.

The State's viewpoint severely understates the level of intrusion that GPS entails. The *Doe* Court, citing a passage from *State v. Holden*, described the character of the intrusion:

The whole of a person's progress through the world, into both public and private spatial spheres, can be charted and recorded over lengthy periods possibl[y] limited only by the need to change the transmitting unit's batteries. Disclosed in the data retrieved from the transmitting unit, nearly instantaneously with the press of a button on the highly portable receiving unit, will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue, or church, the gay bar and on and on. What the technology yields and records with breathtaking quality and quantity is a highly detailed profile, not simply of where we go, but by easy inference, of our associations-political, religious, amicable and amorous, to name a few-and of the pattern of our professional and advocational pursuits.<sup>37</sup>

This intrusion, onerous as it is, makes sense for sex offenders released to the community just after their qualifying sex offense. But there is no justification for imposing the intrusion for an unrelated offense.

As to the nature of the governmental concern, the State disagrees with the argument that the government cannot establish a legitimate concern when Tier III sex offenders are never GPS monitored after they finish their

---

<sup>37</sup> *Doe* at 1275-1276, citing, *State v. Holden*, 54 A.3d 1123, 1130 (Del. Super. 2010).

sentence – that is, unless they commit a new offense. Rather, the State asserts the error in that argument is that it focuses on whether the offender has become more dangerous as a sex offender to the community when they commit an unrelated offense.

Instead, the State posits, the “relevant change” is the lowering of the offender’s expectation of privacy when he gets put on probation for a new offense. That, according to the State, is the “critical difference because it changes the balance of the interests.”<sup>38</sup>

This factor – the nature and immediacy of the government interest – has nothing to do with the expectation of privacy. The focus is on whether the government interest is important and immediate enough to justify the intrusion. The government cannot justify an immediate interest in monitoring offenders who it has not monitored for years or decades. Even the director of Probation did not give any thought to whether governmental monitoring of offenders serving their original probationary sentence made any sense. One suspects the director would have even less of an idea why Probation installs monitors on subsequent offenders.

Because the nature of the intrusion is so draconian and intrusive, and because the government cannot justify it, the search occasioned by GPS

---

<sup>38</sup> Ans. Br. at 44-45.

monitoring of subsequent offense probationers violates the Fourth  
Amendment.

## **CONCLUSION**

Based on the foregoing and on the opening brief, this Court should find that the GPS tracking required by 11 *Del. C.* § 4121(u) applies only to the probation for the offense resulting in the offender's placement on the sex offender registry and not to any offense in the future for which the offender is sentenced to probation. This Court should therefore find that the Superior Court erred in holding otherwise in Mr. Cannon's case and reverse the Superior Court's judgment.

**COLLINS PRICE WARNER  
WOLOSHIN**

/s/ Patrick J. Collins  
Patrick J. Collins, ID No. 4692  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801  
(302) 655-4600

*Amicus Curiae*

Dated: April 28, 2026

**CERTIFICATE OF SERVICE**

The undersigned certifies that on April 28, 2026, he caused the attached *Reply Brief of Amicus Curiae* to be delivered via U.S. Mail Service, to the following:

Alton Cannon  
204 West 21<sup>st</sup> Street  
Wilmington, DE 19802

**COLLINS PRICE WARNER  
WOLOSHIN**

/s/ Patrick J. Collins  
Patrick J. Collins, ID No. 4692  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801  
(302) 655-4600