



IN THE SUPREME COURT OF THE STATE OF DELAWARE

KHIHEIM HANZER,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	No. 496, 2025
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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I. BECAUSE POLICE RELIED UPON AN INVALID CAPIAS, FAILED TO CORROBORATE ANY ACTUAL CRIMINAL ACTIVITY, AND POSSESSED NO REASONABLE ARTICULABLE SUSPICION JUSTIFYING THE SEIZURE, THE SUPERIOR COURT ERRED IN DENYING SUPPRESSION.

In its State’s Answering Brief, the State fails to overcome the constitutional defects in Mr. Hanzer’s seizure. The State has now had two chances to explain what justified stopping Mr. Hanzer on September 11, 2024. Its first answer—a Justice of the Peace Court capias—turned out to be wrong; the capias had been discharged a month earlier and the State concedes as much. Ans. Br. at 10. Its second answer—a confidential informant tip—was never mentioned on the scene, never appeared in the police report or probable cause affidavit, and was entirely absent from Detective Clancy’s preliminary hearing testimony. Ans. Br. at 11. It surfaced, fully formed, only after the defense moved to suppress.

The State asks this Court to find that the tip alone established probable cause, relying principally on *King v. State*.¹ But *King* involved a past-proven informant who gave police an exact location, and officers who went there and found the suspect immediately, exactly as described.² That is not this case. Officers went to South New Street and found no one. They found Mr. Hanzer an hour later, two miles away, sitting in a truck in a parking lot. A111. Detective Clancy conceded he never saw a

¹ 1993 WL 445484 (Del. 1993).

² *Id.* at *1.

hand-to-hand transaction. A96; A102. The only thing he saw was a man with his hands in his lap. That is not probable cause under any Delaware decision this Court has issued.

The State also argues the capias was just one reason among several, and that pretext is constitutionally permissible under *Whren* and *Juliano*.³ Ans. Br. at 20-21. But those cases involved valid stops. A void warrant is not a valid stop. Delaware has no good-faith exception, and an officer's tactical convenience in using an invalid capias to protect a CI cannot substitute for the constitutional predicate the Fourth Amendment and Article I, Section 6 require.

Under this record, the capias was invalid and that concession matters. There is no dispute about the capias. It had been discharged on August 12, 2024, a month before Mr. Hanzer was arrested. It remained in DELJIS only because of a clerical error. The State, as it must, concedes this. Ans. Br. at 10. What the State disputes is what follows from it. According to the State, the capias was simply “not the only reason” for the stop, and independent probable cause existed regardless. Ans. Br. at 19. That framing understates the problem. Delaware has no good-faith exception to an unlawful seizure.⁴ “Simple good faith on the part of the arresting officer is not

³ *Whren v. United States*, 517 U.S. 806 (1996); *Juliano v. State*, 254 A.3d 369 (Del. 2020).

⁴ *Dorsey v. State*, 761 A.2d 807, 821 (Del. 2000).

enough.”⁵ The capias was void. Officers told Mr. Hanzer the stop was “about capias.” A110. Clancy testified at the preliminary hearing that the stop was based on the capias and said nothing about any CI. A29. The void warrant was not a background detail; it was the stated basis for the seizure.

The State argues that Clancy relied on the capias because it helped protect the CI’s identity. Ans. Br. at 21. Maybe so. But an officer cannot use an invalid warrant to make an arrest and then defend that arrest by pointing to the operational benefits of using an invalid warrant. This logic is ludicrous. The question is not whether the tactic was sensible. The question is whether the seizure was constitutional. Because the capias was void, it provides no constitutional support for what happened here.

The State also argues that the instant case is “nearly identical” to *King*. Ans. Br. at 12. It is not. The features that made *King* work are precisely what is missing here. In *King*, a reliable informant told police that a man in a black baseball cap and cut-off jeans was sitting at a card table on South Kirkwood Street with a large amount of crack cocaine.⁶ Officers went there. They found him, at that location, in those clothes, at that table. The corroboration was immediate and exact. And the basis for the stop was documented and consistent from beginning to end.

⁵ *Register v. State*, 337 A.3d 1224, 1249 n.87 (Del. 2024) (quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968)).

⁶ 1993 WL 445484, at *1.

None of that holds true here. The record reflects that the CI told Clancy that Mr. Hanzer was somewhere on South New Street. Clancy acknowledged the CI gave no specific spot and that Mr. Hanzer “could have been anywhere on South New Street.” A95. Officers drove to South New Street. Mr. Hanzer was not there. They drove elsewhere. He was not there either. They eventually found him about an hour after the tip, two miles away, in a Big Lots parking lot. The State’s own brief acknowledges that “by the time police were able to get to the location, Mr. Hanzer was no longer there.” Ans. Br. at 15. In *King*, police arrived and found the suspect exactly where the informant said he would be. That is the opposite of what happened here.

There are five other differences worth noting. First, this case involves an invalid capias that served as the operational justification for the stop; nothing like that existed in *King*. Second, officers in *King* openly relied on the CI tip as their basis for acting; here, they told Mr. Hanzer the stop was about the capias and kept the CI basis out of the preliminary hearing entirely. Third, Clancy omitted the alleged drug dealing from his police report, probable cause affidavit, and preliminary hearing testimony, records he acknowledges would normally include information that material. A94; A106–08. Fourth, Clancy admitted that relying on the capias “allow[ed] us to attempt to protect the CI’s identity a little bit better.” A106–07. The CI tip was not just undocumented; it was deliberately concealed behind a legal

instrument that turned out to be invalid. Fifth, the consistency that *King* reflected throughout, from initial tip to arrest to hearing, is nowhere in this record.

Perhaps sensing that it could be effective, the State notes that Mr. Hanzer was wearing the same clothes and riding the same bicycle when found. Ans. Br. at 16. True. But matching a description of clothing and a bicycle is not corroboration of criminal activity. The State also relies on the informant's prior track record of approximately 20 tips leading to arrests. Ans. Br. at 13. Prior reliability matters, but it is not self-sufficient. A reliable informant's tip still must be specific enough and sufficiently corroborated to establish probable cause for *this* arrest.⁷ In *Lopez-Vazquez*, proximity to a described suspect was not enough.⁸ Moreover, in *McDougal*, presence with identified individuals based on a stale tip was not enough either.⁹ This Court has consistently insisted that corroboration must be corroboration of *criminal activity*, not merely innocent features of appearance or general location.

Perhaps the most dubious position advanced by the State is that credibility is the same as corroboration. The State leans heavily on the Superior Court's credibility finding. Ans. Br. at 27. The trial judge believed Clancy. Fine. But that does not end the analysis, it just sets the starting point for it. Let's take Clancy's

⁷ See *Brown v. State*, 897 A.2d 748, 751 (Del. 2006).

⁸ *Lopez-Vazquez v. State*, 956 A.2d 1280 (Del. 2008).

⁹ *McDougal v. State*, 314 A.3d 1077 (Del. 2024).

testimony as entirely true. He received a tip from a reliable CI. He identified Mr. Hanzer on a surveillance camera. He drove to South New Street. Mr. Hanzer was gone. He found him later, in a parking lot, getting into a truck. He watched Mr. Hanzer's hands move in a way that looked, to him, consistent with a drug transaction. He never saw money change hands. He never saw drugs change hands. He never saw a transaction at all. A96; A102. Those are the facts, credited fully. And they do not add up to probable cause.

The constitutional question is not whether Clancy sincerely believed criminal activity was happening. It is whether objective facts justified the seizure. A credibility ruling answers a factual question—did the officer say what he said? It does not answer the constitutional question—did those facts, if true, establish probable cause? The two are different inquiries, and the State's brief erroneously treats them as one.

Contrary to the State's contention, the officers never saw a crime. The State points to Clancy's observation of Mr. Hanzer inside the pickup truck—hands in his lap, movements "consistent with" a drug deal—as corroboration of the tip. Ans. Br. at 22–23. But Clancy admitted he saw no transaction. A96; A102. What he saw was a man sitting in a truck with his hands in his lap. Delaware courts have addressed this kind of argument repeatedly and reached the same conclusion each time. In *Harris*, the defendant looked over his shoulder three times while leaving a

train.¹⁰ The Court held that “lawful and ostensibly innocent” conduct does not justify a stop.¹¹ In *Riley*, the defendant got into and out of a car occupied by people who appeared underage, in a liquor store parking lot.¹² Still not enough. *Lopez-Vazquez* and *McDougal* are in the same line. The pattern in Delaware’s decisions is clear: facially innocent conduct does not become criminal because an officer suspects it might be.

This Court’s recent *en banc* decision in *Register*, argued by undersigned counsel, reinforces that point—even when read in the light most favorable to the State.¹³ The majority in *Register* affirmed the stop there specifically because officers observed an identifiable sequence: a known drug dealer sat in the driver’s seat, reached under the seat for several seconds, exited the car, walked directly to the defendant, and completed what the officer—drawing on training and experience—identified as a hand-to-hand exchange. The majority described that sequence as the critical distinguishing feature separating *Register* from cases like *Lopez-Vazquez* where no such specific observed conduct existed.¹⁴ Nothing comparable happened here. Clancy did not observe any sequence of conduct that he could connect, from training or experience, to drug activity. He saw Mr. Hanzer get into a truck and sit

¹⁰ *Harris v. State*, 806 A.2d 119, 122 (Del. 2002).

¹¹ *Id.* at 128.

¹² *Riley v. State*, 892 A.2d 370, 376 (Del. 2006).

¹³ *Register v. State*, 337 A.3d 1224 (Del. 2024).

¹⁴ *Id.* at 1237–38.

there. He conceded he saw no transaction. That puts this case squarely on the wrong side of the line *Register* drew.

The dissent in *Register* is equally instructive. The dissent emphasized that “[i]nherent in ‘reasonable articulable suspicion’ is the requirement that the reasons for suspicion be articulable” and that there are limits “to how far police training and experience can go towards finding latent criminality in innocent acts.”¹⁵ The dissent further cautioned that officer testimony that conduct is merely “consistent with” a drug transaction, without articulating why, amounts to nothing more than a bare assertion insufficient to support a stop.¹⁶ Indeed, the dissent concluded that even the facts before the Court in *Register*, which included an actual observed hand-to-hand exchange with a known drug dealer actively under surveillance, fell short of the constitutional mark.¹⁷

The facts here are materially weaker than those the *Register* dissent found insufficient. In *Register*, officers at least saw two people touch hands immediately after the dealer retrieved something from under a seat. Clancy saw Mr. Hanzer sitting in a truck. No exchange. No retrieval. No contact with another person. If two members of this Court concluded the *Register* facts fell short, the facts here fall

¹⁵ *Id.* at 1258 (Valihura, J., dissenting) (quoting *United States v. Drakeford*, 58 F.4th 113 (4th Cir. 2023)).

¹⁶ *Id.* at 1258–59.

¹⁷ *Id.* at 1248.

further still. The dissent also warned against what it called the “assumptions-upon-assumptions” problem: the officer assumed a retrieval occurred, assumed the object was contraband, and assumed it was exchanged.¹⁸ The same logic governs here. Clancy assumed that Mr. Hanzer’s hand movements were a transaction, that the transaction involved drugs, and that this retroactively corroborated a tip he had never acted on in real time. Stacking assumptions is not corroboration. The Fourth Amendment requires more.

Turning to the pretext argument, the State invokes *Whren* and *Juliano* for the proposition that a pretextual stop is permissible so long as independent probable cause exists. Ans. Br. at 20–21. But that is not quite what those cases say, and it is not what happened here. *Whren* and *Juliano* address stops made for legitimate, lawful reasons, a traffic violation, for instance, where the officer’s actual motivation was to investigate something else. The rule those cases establish is that a valid legal basis for a stop does not become invalid because the officer had an ulterior motive. But neither case holds that officers may invoke an *invalid* legal basis, make a stop, and then retroactively validate the seizure by pointing to probable cause they chose not to disclose. That is a different proposition entirely, and neither *Whren* nor *Juliano* supports it.

¹⁸ *Id.* at 1261.

The capias here was not a valid legal basis that happened to be pretextual. It was a void instrument, discharged weeks before the arrest. Officers told Mr. Hanzer it was why he was being stopped. They told the magistrate the same thing. Only when the defense challenged the capias did the CI tip emerge as the justification. That sequence is exactly the kind of shifting, post-hoc rationalization that Article I, Section 6 is designed to prevent. Delaware has no good-faith exception. *Dorsey*, 761 A.2d at 821. The constitutional remedy for an unlawful seizure is suppression, not reconstruction. The State's explanation, that Clancy used the capias to protect the CI, actually illustrates the problem rather than solving it. Ans. Br. at 21. Officers deliberately chose to present an invalid warrant as the reason for the stop in order to conceal the real reason. That is not the kind of good-faith police conduct courts have been willing to excuse. It is precisely the behavior that exclusion is meant to deter.

Finally, the missing drug evidence cannot be explained away. Clancy's police report documented the CI's tip about the firearm. It said nothing about drugs. His probable cause affidavit said nothing about drugs. His preliminary hearing testimony said nothing about drugs. A94; A106–08. Clancy acknowledged that information about drug activity would have been important to include. A108. The drug allegation appeared for the first time in the State's response to the Motion to Suppress. A57.

The State's explanation is that Clancy withheld information about the CI to protect the informant's identity. The Superior Court found that credible. A147–48. Mr. Hanzer does not ask this Court to second-guess that finding. But protecting a CI's identity does not require affirmatively misattributing a stop to a different legal basis. Clancy could have documented the drug allegation without identifying the CI. He could have said, at the preliminary hearing, that there was CI information he was not at liberty to fully disclose. Instead, he testified that the stop was based on the capias and left it there. A29. That goes beyond protecting a source. It substitutes one justification for another, and the one that was substituted turned out to be invalid.

If the CI tip alone established probable cause, as the State now contends, officers had every reason to say so from the start and to invoke the recognized legal procedures for protecting a confidential source. They did not. The Court is entitled to ask why, and to weigh that question when assessing whether the probable cause now claimed actually existed at the moment of the seizure.

Mr. Hanzer respectfully requests that this Court reverse the Superior Court's denial of the Motion to Suppress and remand for proceedings consistent with that ruling. Thus, reversal is now required.

CONCLUSION

For the reasons and upon the authorities cited herein, the undersigned counsel respectfully submits that Khiheim Hanzer's convictions and sentences must be reversed.

Respectfully submitted,

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