



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DASHAWN AYERS,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 646, 2013**
)
 STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellee.)

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

STATE’S ANSWERING BRIEF

ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

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NATURE AND STAGE OF THE PROCEEDINGS

On September 4, 2012, the Kent County Grand Jury returned an indictment against Dashawn Ayers (“Ayers”), Michael Demby (“Demby”), Galen Brooks (“Brooks”) and eleven other individuals.¹ A-1. The charges pertaining to Ayers alleged one count of Drug Dealing, one count of Aggravated Possession, one count of Racketeering² and one count of Conspiracy Second Degree. A-1. Ayers filed a Motion to Sever on November 20, 2012. A-10. A hearing on the motion was held on April 5, 2013, and on July 30, 2013, the Superior Court issued a written ruling denying the motion. A-3, A-15-17. On September 30, 2013, Ayers filed a Motion *in Limine* to Exclude Wiretap Phone Calls. A-3. The Superior Court denied Ayers’ motion on October 1, 2013,³ and the case against Ayers and Demby proceeded to a jury trial that same day.⁴ A-3. On October 9, 2013, Ayers was found guilty of all charges. A-4. Ayers was sentenced on November 25, 2013 to an aggregate of ten years incarceration followed by descending levels of

¹ *Exhibit A* to State’s Answering Brief.

² The State entered a *nolle prosequi* on the Racketeering charge prior to trial. A-1.

³ The trial judge issued an oral ruling denying the motion prior to trial. A-37-38.

⁴ The State elected to try Brooks’ case separately. A-16.

supervision.⁵ Ayers appealed his conviction and sentence. This is the State's answering brief.

⁵ *Exhibit B* to State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court correctly denied Ayers' motion *in limine* to exclude wiretap recordings which contained conversations between Ayers' co-conspirators. Under Delaware law, co-conspirator statements are admissible under D.R.E. 801(d)(2)(E) and are not testimonial under *Crawford v. Washington*.⁶

II. Appellant's argument is denied, in part and admitted, in part. There was no violation of the Double Jeopardy clause as the State properly indicted and tried Ayers on charges of Drug Dealing and Aggravated Possession. For purposes of sentencing in this case, however, those two charges should merge.

III. Appellant's argument is denied. The Superior Court properly denied Ayers' Motion to Sever. Ayers fails to demonstrate how the trial judge abused his discretion in denying Ayers' severance motion. Ayers likewise fails to demonstrate how he was prejudiced by being tried jointly with his codefendant.

⁶ 541 U.S. 36 (2004).

STATEMENT OF FACTS

From May to June 2012, a multi-agency law enforcement team, led by the Delaware State Police, conducted a wiretap investigation into drug sales in Kent County. B-14-15. The main target of the investigation was Galen Brooks (“Brooks”). B-2. Detective Jeremiah Lloyd (“Lloyd”) of the Delaware State Police was the lead investigator. B-2. The team, led by Lloyd, monitored the wiretap and continued their investigation into Brooks’ organization and its activities. B-1-2.

On May 26, 2012, investigators monitoring Brooks’ communications heard a phone conversation between Brooks and Michael Demby (“Demby”) in which Brooks told Demby to go to his (Brooks’) parents’ home located at 106 Red Oak Drive in Dover, Delaware and await further instructions.⁷ Police set up surveillance at 106 Red Oak Drive. B-59-60. They observed Demby arrive at that address driving a red Honda. B-60. Demby went inside and called Brooks.⁸ During the next phone call, Brooks instructed Demby to prepare a package of cocaine to sell to a person from Capitol Green who would then give Demby

⁷ State’s Trial Exhibit 1 (Call # 64).

⁸ State’s Trial Exhibit 1 (Call # 65).

\$2400.⁹ According to Brooks, the buyer would be driving a Dodge Caravan which would be parked in the parking lot of a nearby store.¹⁰ Brooks advised Demby to call back for further instruction after he received the money.¹¹

The police conducting surveillance at 106 Red Oak Road observed Demby exit the house and place a package in the trunk of the Honda. B-61. Demby and Brooks' brother, James Brooks ("James"), then both got into the Honda and drove away. B-61. Police also established surveillance at the nearby McKee Crossing shopping center. B-10. That surveillance confirmed that there was an individual, who was later identified as Dashawn Ayers ("Ayers"), seated in a Dodge Caravan in the parking lot. B-15. During the police surveillance, officers observed the Honda occupied by Demby and James enter the parking lot and park next to the Caravan. B-18. Demby got out of the Honda and immediately entered the Caravan while James went into a store in the shopping center. B-17. Demby remained in the Caravan for a brief time and eventually exited the car and went into the store. B-16-17. Shortly thereafter, Demby and James exited the store and got into the Honda and drove away. B-14. Ayers, driving the Caravan, also drove away. B-14. One of the surveillance units followed Ayers and instructed Cpl.

⁹ State's Trial Exhibit 1 (Call # 67).

¹⁰ State's Trial Exhibit 1 (Call # 67).

¹¹ State's Trial Exhibit 1 (Call # 67).

Timothy Valeski (“Valeski”) of the Delaware State Police to conduct a traffic stop of the Caravan using his unmarked police car. B-67. Valeski stopped the Caravan, and Ayers produced his license (leaving it with Valeski). B-62. When Valeski told Ayers to exit the car, Ayers put the car in gear and fled. B-63-64. Valeski was instructed not to get involved in a vehicle chase given the time of day and the possibility of injuring civilians. B-68-69. The police did not have an opportunity to search the Caravan before Ayers fled. B-11.

Demby called Brooks after the meeting at the shopping center and told him that everything went well and that he had the money.¹² Brooks then instructed Demby to take \$100 for his participation and to bring the remaining \$2300 to Brooks’ mother, Valorie Brooks.¹³ Moments later, Valorie Brooks called Brooks and told him that she received \$2300.¹⁴ Brooks told his mother to keep \$50 for herself.¹⁵

On June 1, 2012, Ayers turned himself into the Delaware State Police claiming that he knew he had outstanding warrants. B-65. Ayers acknowledged

¹² State’s Trial Exhibit 1 (Call # 71).

¹³ State’s Trial Exhibit 1 (Call # 71).

¹⁴ State’s Trial Exhibit 1 (Call # 72).

¹⁵ State’s Trial Exhibit 1 (Call # 72).

that he had been stopped by an officer and when asked for his license and other documentation he became confused and drove away. B-66.

ARGUMENT

I. BROOKS’ WIRETAP CONVERSATIONS WERE ADMISSIBLE AS CO-CONSPIRATOR STATEMENTS UNDER D.R.E. 801(d)(2)(E). THE TRIAL JUDGE PROPERLY FOUND THAT THE STATEMENTS WERE NOT TESTIMONIAL AND DID NOT VIOLATE THE RULE ANNOUNCED BY THE UNITED STATES SUPREME COURT IN *CRAWFORD V. WASHINGTON*.¹⁶

Question Presented

Whether the Superior Court erred by permitting the wiretap conversations of Galen Brooks to be introduced into evidence.

Standard and Scope of Review

A trial judge’s evidentiary rulings are reviewed by this Court for an abuse of discretion.¹⁷ “To the extent that the ruling pertains to an alleged constitutional violation, [this Court’s review is] *de novo*.”¹⁸

Merits of the Argument

At trial, the State introduced into evidence, over the objection of counsel, wiretap evidence which consisted of a disk containing recordings of five separate

¹⁶ 541 U.S. 36 (2004).

¹⁷ *Cooney-Koss v. Barlow*, --- A.3d ---, 2014 WL 972213, at *4 (Del. Mar. 7, 2014).

¹⁸ *Jones v. State*, 940 A.2d 1, 9-10 (Del. 2007). See *Wescott v. State*, 2009 WL 3282707, at *5 (Del. Oct. 13, 2009) (citing *Norman v. State*, 976 A.2d 843,857 (Del. 2009); *Weber v. State*, 971 A.2d 135, 141 (Del. 2009); *Capano v. State*, 781 A.2d 556, 607 (Del. 2001)).

phone calls made on May 26, 2012.¹⁹ The phone calls captured conversations between Brooks and Michael Demby as well as conversations between Brooks and his mother, Valorie Brooks.²⁰ The phone calls revealed that (1) Brooks agreed to sell cocaine to Ayers for \$2400; (2) Brooks instructed Demby to “cut” and package the cocaine for sale to Ayers; (3) Brooks instructed Demby to deliver the cocaine to Ayers at a nearby parking lot and collect the money; and (4) Brooks instructed Demby and Valorie Brooks what to do with the proceeds from the sale of the cocaine.²¹

On appeal, Ayers first argues that the wiretap conversations were testimonial and should not have been admitted into evidence under *Crawford v. Washington*.²² In *Jones v. State*, this Court held that co-conspirator statements made in furtherance of a conspiracy are admissible under the Delaware Rules of

¹⁹ B-3-9. State’s Trial Exhibit 1.

²⁰ B-6. State’s Trial Exhibit 1.

²¹ State’s Trial Exhibit 1. The State called Special Agent Jeffrey Dunn (“Dunn”) of the Drug Enforcement Administration as an expert in drug investigations. B-19-57. Dunn reviewed the taped conversation between Brooks and Demby which was played for the jury. B-27-28. Dunn testified that based on his training and experience, Brooks and Demby were discussing a drug deal that involved 56 grams of cocaine which would be “cut” with 3 ounces of a cutting agent. B-28-30. Dunn made this determination based on the terminology used by Brooks and Demby and the prevailing price of cocaine. B-32.

²² *Op. Brf.* at 8.

Evidence.²³ However, their admissibility does not preclude a separate analysis under the Sixth Amendment of the U.S. Constitution.²⁴ Jones argued that the United States Supreme Court holding in *Crawford* precluded admission of co-conspirator statements at his trial, claiming that the statements were testimonial and violated his rights under the Confrontation Clause.²⁵ The *Jones* court rejected that argument and found that the co-conspirator statements were not testimonial under *Davis v. Washington*²⁶ and did not implicate the Sixth Amendment.²⁷ As the Court explained:

Thus, under *Crawford* and *Davis*, a statement is testimonial and implicates the Confrontation Clause where it is given in non-emergency circumstances and the declarant would recognize that his

²³ *Jones*, 940 A.2d at 11.

²⁴ *Id.*

²⁵ *Jones*, 940 A.2d. at 12. In *Crawford*, The United States Supreme Court held that the Confrontation Clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” 541 U.S. at 53-54.

²⁶ 547 U.S. 813, 822 (2006).

²⁷ *Jones*, 940 A.2d at 13. In *Davis*, the United States Supreme Court held that “[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” 547 U.S. at 822.

statements could be used against him in subsequent formal proceedings.²⁸

In *Jones*, this Court noted that *Crawford* “recognize[s] . . . that statements made in the furtherance of a conspiracy are *nontestimonial*.”²⁹ Here, Brooks’ wiretapped conversations which were introduced at trial are nontestimonial because they are statements made in furtherance of a conspiracy. Stated differently, the statements are not “‘testimonial’ within the meaning of *Crawford* and *Davis*. . . [and] are subject only to our State’s hearsay rules because they do not implicate the Confrontation Clause.”³⁰ The Superior Court did not err in finding that the wiretap conversations are nontestimonial.

Ayers next argues that even if the wiretap conversations are nontestimonial under *Crawford*, the trial judge should have excluded them because they are not co-conspirator statements made in the furtherance of a conspiracy under D.R.E. 801(d)(2)(E).³¹ He is mistaken. D.R.E. 801(d)(2)(E) provides that statements made

²⁸ *Jones* at 12-13. See also *Wheeler v. State*, 36 A.3d 310, 318 (Del. 2012) (“a statement is ‘testimonial’ if it is provided during an investigation for the purpose of fact gathering for a future criminal prosecution.” *Id.* (citing *Dixon v. State*, 996 A.2d 1271, 1277–78 (Del. 2010))).

²⁹ *Jones* at 12-13 (emphasis added).

³⁰ *Id.* at 13.

³¹ *Op. Brf.* at 12.

in furtherance of a conspiracy are admissible against a criminal defendant at trial when:

The statement is offered against a party and is . . . (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy; provided that the conspiracy has first been established by preponderance of the evidence to the satisfaction of the court.³²

At trial, the State introduced Brooks' phone conversations in which he spoke with Demby, James, and Valorie Brooks. Brooks instructed Demby how to "cut" the cocaine, how much he was to sell to Ayers and how much money Ayers would pay for the cocaine. He told Demby where he would meet Ayers and when that meeting would take place. Brooks also instructed Demby what to do with the proceeds in addition to telling Valorie Brooks to hold onto the remaining money after taking \$50 for herself.³³ The statements were made in furtherance of a conspiracy to sell drugs to Ayers and were therefore admissible under D.R.E. 801(d)(2)(E).

Ayers also urges this Court to hold that Delaware's Confrontation Clause requires face to face confrontation of witnesses.³⁴ This Court has stated:

³² D.R.E. 801(d)(2)(E). *See Jones*, 940 A.2d at 11.

³³ *See Hackett v. State*, 1999 WL 624108, at *3 (Del. July 16, 1999) ("statements made after [a] robbery but before the proceeds were divided are made 'in furtherance of [a] conspiracy.'" *Id.* (quoting *Williams v. State*, 494 A.2d 1237, 1242 (Del. 1985)).

³⁴ *Op. Brf.* at 15. Article I, § 7 of the Delaware Constitution provides:

The right of a criminal defendant to confront the witnesses against him is protected by both the United States and Delaware Constitutions. The right is not absolute, however, and does not require that every witness testify in court in front of the defendant. The admission of hearsay statements may be allowed when required by considerations of public policy and the necessities of the case.³⁵

Here, Ayers is asking this Court to interpret the language of Article I, Section 7 of the Delaware Constitution as imposing a literal face to face confrontation requirement for *all* testimony and evidence. In *McGriff v. State*, this Court rejected that same argument stating:

It would be incongruent to interpret this provision as an absolute requirement of in court, physical “face to face” confrontation in all circumstances. A strict reading of the phrase “face to face” would virtually foreclose the State’s ability to admit hearsay testimony against a criminal defendant, including those statements determined to be particularly trustworthy, substantially eliminating many exceptions to the rule prohibiting hearsay testimony. As with the Federal Confrontation Clause, a literal reading of the Delaware Confrontation Clause would abrogate virtually every hearsay exception, a result long rejected as unintended and too extreme. The right to meet witnesses “face to face” is not mandatory in all circumstances; rather, Article I, § 7 expresses a preference for “face to face” confrontation in

Section 7. In all criminal prosecutions, the accused hath a right to be heard by himself or herself and his or her counsel, to be plainly and fully informed of the nature and cause of the accusation against him or her, to meet the witnesses in their examination face to face, to have compulsory process in due time, on application by himself or herself, his or her friends or counsel, for obtaining witnesses in his or her favor, and a speedy and public trial by an impartial jury; he or she shall not be compelled to give evidence against himself or herself, nor shall he or she be deprived of life, liberty or property, unless by the judgment of his or her peers or by the law of the land.

³⁵ *McGriff v. State*, 672 A.2d 1027, 1030 (Del. 1996) (*McGriff* I) (quoting *Mattox v. United States*, 156 U.S. 237, 243 (1895) (internal quotes omitted)).

accordance with the law of the land—due process. That preference must yield in those hearsay situations that are consistent with due process: firmly rooted exceptions and hearsay statements that have particularized guarantees of trustworthiness.³⁶

In this case, the wiretap conversations were offered under D.R.E. 801(d)(2)(E). Co-conspirator statements made in the furtherance of a conspiracy are a firmly rooted hearsay exception.³⁷ This Court’s reasoning in *McGriff I* and II makes it clear that Article I, Section 7 of the Delaware Constitution does not require a face to face confrontation when the evidence being admitted falls under a firmly rooted hearsay exception, as was the case here.

Ayers finally contends that admission of the wiretap conversations did not constitute harmless error. “A prejudicial constitutional confrontation violation occurs where the ‘out-of-court statements were not merely cumulative evidence ... [but] likely a principal factor in [the] conviction.’ Where that is not the case, the error is harmless.”³⁸ In this case, there was no error in admitting the wiretap conversations as they were nontestimonial and offered under a firmly rooted

³⁶ 781 A.2d 534, 541-42 (Del. 2001) (*McGriff II*) (citing *Ohio v. Roberts*, 448 U.S. 56, 63 (1980); *Gannon v. State*, 704 A.2d 272 (Del. 1998)) (internal quotations omitted).

³⁷ *State v. Hackett*, 1998 WL 278511, at *3 (Del. Super. May 8, 1998). See *Bourjaily v. United States*, 483 U.S. 171, 183 (1987) (stating “the co-conspirator exception to the hearsay rule is steeped in our jurisprudence.”); *Delaney v. United States*, 263 U.S. 586, 590 (1924).

³⁸ *Wheeler*, 36 A.3d at 321 (quoting *Holmes v. State*, 2010 WL 5043910, at *5 (Del. Dec. 9, 2010) (other citations omitted)).

hearsay exception. As a result, this Court need not engage in a harmless error analysis.³⁹

³⁹ See *Jones*, 940 A.2d at 14 n.46 (“[b]ecause we hold that [the witness’s] statements are not testimonial, we need not address a harmless error analysis”).

II. THERE WAS NO VIOLATION OF THE DOUBLE JEOPARDY CLAUSE AS THE STATE PROPERLY INDICTED AND TRIED AYERS ON CHARGES OF DRUG DEALING AND AGGRAVATED POSSESSION. IN AYERS' CASE, THE DRUG DEALING AND AGGRAVATED POSSESSION CHARGES MERGE FOR PURPOSES OF SENTENCING.

Question Presented

Whether convictions for Drug Dealing in violation of 16 *Del. C.* § 4752(1) and Aggravated Possession in violation of 16 *Del. C.* § 4752(3) merge for purposes of Ayers' sentencing.

Standard And Scope Of Review

This Court reviews “a claim alleging the denial of a constitutional right *de novo*.”⁴⁰

Merits Of The Argument

In 2011, the General Assembly enacted a “comprehensive revision of Delaware’s drug offenses.”⁴¹ Ayers was indicted under the revised law. Ayers was charged with violating 16 *Del. C.* § 4752(1) (Drug Dealing), because “on or about the 26th day of May, 2012, ... [he] did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine any mixture containing cocaine, a controlled

⁴⁰ *Tucker v. State*, 2012 WL 4512900, at *1 (Del. Oct. 1, 2012) (citing *Norman v. State*, 976 A.2d 843, 857 (Del. 2009)).

⁴¹ 2011 Del. Laws, Ch. 13 (H.B. 19).

substance as described in 16 *Del. C.* § 4716(b)(4)”⁴² Ayers was also charged with violating 16 *Del. C.* § 4752(3) (Aggravated Possession), because “on or about the 26th day of May, 2012, ... [he] did knowingly possess 25 grams or more of cocaine any mixture containing cocaine, a controlled substance as described in 16 *Del. C.* § 4716(b)(4).”⁴³ The same quantity of cocaine was the factual basis of both charges.

Ayers appears to argue that both Aggravated Possession and Drug Dealing require proof of the same elements and that no additional element is needed to prove Aggravated Possession.⁴⁴ He is mistaken insofar as § 4752(1) (Drug Dealing) does indeed require proof of an additional element – the intent to deliver.⁴⁵ Because each offense requires proof of an element that the other does

⁴² *Exhibit A* to State’s Answering Brief.

⁴³ *Exhibit A* to State’s Answering Brief.

⁴⁴ *Op. Brf.* at 20-21.

⁴⁵ 16 *Del. C.* § 4752 provides:

Drug dealing----Aggravated possession; class B felony

Except as authorized by this chapter, any person who:

- (1) Manufactures, delivers, or possesses *with the intent to manufacture or deliver* a controlled substance in a Tier 4 quantity;
- (2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;
- (3) Possesses a controlled substance in a Tier 5 quantity;

not, section 4752(3) is not a “lesser included offense” of section 4752(1) that must be merged pursuant to 11 *Del. C.* § 206⁴⁶ or *Blockburger v. United States*.⁴⁷ However, Chapters 48 & 49 of Title 16 allow, for most drug crimes, a defendant to be charged only with the highest grade of offense applicable to the defendant’s crime with no additional drug dealing, aggravated possession, or simple possession charges.⁴⁸ While it was entirely appropriate for the State both to have indicted Ayers for violating sections 4752(1) and 4752(3) and to have proceeded to trial on

(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or

(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a.--i, of this title, and there are 2 aggravating factors,

shall be guilty of a class B felony. (emphasis added).

⁴⁶ 11 *Del. C.* § 206(a) provides that a defendant’s conduct may result in a conviction for more than one offense unless “(1) One offense is included in the other, as defined in subsection (b) of this section; or (2) One offense consists only of an attempt to commit the other; or (3) Inconsistent findings of fact are required to establish the commission of the offenses.” 11 *Del. C.* § 206(b) provides: “A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when: (1) It is established by the proof of the same or less than all the facts required to establish the commission of the offense charged; or (2) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or (3) It involves the same result but differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.” (emphasis added).

⁴⁷ 284 U.S. 299, 304 (1932) (“The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.”).

⁴⁸ 2011 Del. Reg. Sess. H.B. 19 (Bill Summary). *And cf.* 16 *Del. C.* § 4766(1).

both offenses,⁴⁹ because the same set of facts and cache of cocaine provide the basis for the two charges, Counts 15 and 17 merge for sentencing purposes. Thus the case should be remanded for the sole purpose of merging Count 15 into Count 17 and resentencing.

⁴⁹ See *Zugehoer v. State*, 980 A.2d 1007, 1013-14 (Del. 2009) (“The State may charge different theories of criminal liability for the same offense in a single indictment.”).

III. THE TRIAL JUDGE DID NOT ABUSE HIS DISCRETION WHEN HE DENIED AYERS' MOTION TO SEVER.

Question Presented

Whether the trial judge abused his discretion by denying Ayers' Motion to Sever and failing to order separate trials for Ayers and Demby where Ayers failed to demonstrate prejudice from joinder.

Standard And Scope Of Review

This Court reviews the Superior Court's denial of a motion to sever under an abuse of discretion standard.⁵⁰

Merits of the Argument

"Ordinarily, defendants indicted together should be tried together. However, if justice requires it, the trial judge should grant separate trials."⁵¹ This Court has listed the following four factors that the trial court should consider when determining whether a motion for severance should be granted: "(1) problems involving a co-defendant's extra-judicial statements; (2) an absence of substantial independent competent evidence of the movant's guilt; (3) antagonistic defenses as

⁵⁰ *Jackson v. State*, 990 A.2d 1281, 1285 (Del. 2009) (citing *Winer v. State*, 950 A.2d 642, 648 (Del. 2008); *Kemske v. State*, 2007 WL 3777, at *3 (Del. Jan. 2, 2007); *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988)).

⁵¹ *Robertson v. State*, 630 A.2d 1084, 1093 (Del. 1993) (citing *Jenkins v. State*, 230 A.2d 262, 272 (Del. 1967)).

between the co-defendant and the movant; and (4) difficulty in segregating the State's evidence as between the co-defendant and the movant.”⁵²

Prior to trial, Ayers moved to sever his charges from his codefendants, Brooks and Demby.⁵³ The basis of that motion was an allegation of prejudice from statements made by Brooks on the wiretap.⁵⁴ At no point in his motion below did Ayers allege prejudice from the statements attributed to Demby or Demby's charges.⁵⁵ The trial judge denied the motion, finding that because the State decided to try Brooks separately, a *de facto* severance had occurred.⁵⁶ That led the trial judge to conclude that “as to Michael Demby and James Brooks, defendant Ayers sets forth no separate or additional rationale for severance from those two defendants.”⁵⁷ Ayers orally renewed his motion prior to trial, claiming for the first time that he would be prejudiced by Demby's separate drug offenses.⁵⁸ The trial

⁵² *Floudiotis v. State*, 726 A.2d 1196, 1210 (Del. 1999) (citing *Manley v. State*, 709 A.2d 643, 652 (Del. 1998); *Jenkins*, 230 A.2d at 273)).

⁵³ A-11-14.

⁵⁴ A-12.

⁵⁵ A-11-14.

⁵⁶ A-16.

⁵⁷ A-16.

⁵⁸ A-23. In addition to being charged with Drug Dealing, Conspiracy Second Degree, Aggravated Possession and Possession of Drug Paraphernalia for the drug sale to Ayers on May 26, 2012, Demby was also charged in counts 52-55 of the indictment with Drug Dealing,

judge again denied the motion finding that Ayers failed to demonstrate any prejudice.⁵⁹ However, the trial judge did instruct the jury as follows:

As mentioned during the trial, the charges against defendant Ayers are solely in connection with the alleged events of May 26. The evidence of alleged events in June is not admissible against Mr. Ayers. You should not consider the evidence of alleged events in June in your deliberations concerning the charges against defendant Ayers.⁶⁰

Ayers first claims that because Demby was tried on additional drug-related charges, “the jury was likely swayed that Demby in May delivered cocaine to Ayers in Ayers’ car.”⁶¹ He attempts to advance this argument by claiming that Demby’s charge involving delivery of cocaine in June would have been inadmissible under D.R.E. 404(b) in a separate trial against Ayers. Ayers’ theory conflates the factors and analyses for severance of offenses and severance of codefendants. While it is true that the Rule 404(b) analysis may be proper in some cases in which there has been a joinder of *offenses*,⁶² the analysis has no

Conspiracy Second Degree and Criminal Solicitation Second Degree and Aggravated Possession for a separate sale of drugs on June 2, 2012. *Exhibit A* to State’s Answering Brief.

⁵⁹ A-25.

⁶⁰ B-70-71.

⁶¹ *Op. Brf.* at 27.

⁶² See e.g. *Monroe v. State*, 28 A.3d 418, 426-27 (Del. 2011). Cf. *Wood v. State*, 956 A.2d 1228, 1231-32 (Del. 2008) (stating “our focus is not on a *Getz* analysis of the admissibility of prior bad acts under D.R.E. 404(b) under a modus operandi theory. Admissibility in separate trials is not a requisite for joinder of charges in an indictment. If charges are properly joined, there is no longer concern about prior conduct that was never proven. Rather in one trial, the State must prove

application to a joined codefendant's charges. The rule applies to the other crimes wrongs or other acts of the defendant – not his codefendant.

Of the four factors listed above, Ayers is only able to identify one that is applicable to his case. He appears to contend that one of the reasons the trial judge should have severed his case from Demby's was because there was difficulty in segregating the State's evidence as between the two defendants. A trial judge should "grant a severance under Rule 14 only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence."⁶³ Here, there was ample evidence that Ayers met Demby and purchased 56 grams of cocaine for \$2400. Ayers fled when police made contact with him, preventing the police from discovering the drugs. Ayers nonetheless argues that evidence of Demby selling drugs to another person at another time could have prejudiced the jury. He has "the burden of demonstrating . . . prejudice and mere hypothetical prejudice is not sufficient."⁶⁴ Ayers fails to show how evidence relating to Demby selling drugs to

beyond a reasonable doubt that each set of conduct occurred for the defendant to be found guilty on all counts.").

⁶³ *Stevenson v. State*, 709 A.2d 619, 630 (Del. 1998) (quoting *Zafiro v. United States*, 506 U.S. 534, 539 (1993) (internal quotations omitted)).

⁶⁴ *Ashley v. State*, --- A.3d ---, 2014 WL 620139, at *2 (Del. Feb. 11, 2014) (quoting *Skinner v. State*, 575 A.2d 1108, 1118 (Del. 1990)).

another person on another occasion prevented the jury from making a reliable judgment about his own guilt or innocence. Moreover, the trial judge instructed the jurors that they were not to consider the evidence of Demby's other charges which were not related to the May 26 charges.⁶⁵ Consequently, he has failed to demonstrate that the trial judge abused his discretion by failing to order separate trials for himself and Demby.

For the first time on appeal, Ayers finally claims that because separate trials were not ordered, he was "precluded from cross-examining Demby in the joint trial, which violated his right of confrontation."⁶⁶ Ayers mistakenly assumes that he would have had a constitutional right to cross-examine Demby if their trials were separate. He offers no support for this proposition. Even if the trials had been severed, Ayers would not have a right to demand that the State call a codefendant as a witness in a criminal trial. Indeed, Ayers is unable to state whether Demby could have been called as a witness or whether Demby would have been available (i.e., waiving or invoking any 5th Amendment privilege). He is likewise unable to proffer what Demby's testimony would have been had he testified, much less that such testimony would have been exculpatory to Ayers.

⁶⁵ "[J]uries are presumed to follow the trial judge's instructions." *Copper v. State*, --- A.3d ----, 2014 WL 620142, at * 5 (Del. Feb. 14, 2014) (citing *Revel v. State*, 956 A.2d 23, 27 (Del. 2008)).

⁶⁶ *Op. Brf.* at 31.

Each of Ayers' contentions is hypothetical. He is unable to demonstrate (1) that Demby would have testified for the State thus subjecting him to cross-examination and (2) that there was a reasonable probability that he was "substantially prejudiced" by the joint trial.⁶⁷ As a result, Ayers has failed to demonstrate that the trial judge abused his discretion in failing to sever his trial from Demby's.

⁶⁷ *Floudiotis*, 726 A.2d at 1210.

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed and the case should be remanded for resentencing, with directions to merge counts 15 and 17 of the indictment.

/s/ Andrew J. Vella
ANDREW J. VELLA (ID No. 3549)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Floor
Wilmington, DE 19801
(302) 577-8500

DATE: April 3, 2014

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

THE STATE OF DELAWARE

: ID NO 1208001950 (AYERS) **RULE 9 - 1**
WARRANT
1205025968 (BROWN) **- 3**
1206011471 (G. BROOKS) **- 2**
1208001961 (J. BROOKS) **RULE 9 - 1**
WARRANT
1206011513 (DEMBY) **- 3**
1206010837 (DOLLARD) **RE- - 11**
INDICTMENT
1208001973 (INGRAM) **RULE 9 - 1**
WARRANT
1206011420 (JACKSON) **- 3**
1208001979 (JAMES) **RULE 9 - 1**
WARRANT
1208001982 (LANDRY) **RULE 9 - 1**
WARRANT
1208002002 (MATTHEWS) **RULE 9 - 1**
WARRANT
1206011505 (PRICE) **- 4**
1208002007 (SCARBOROUGH) **- 1**
RULE 9 WARRANT
1206010872 (YOUNG) **RE- - 9**
INDICTMENT

v.

:
: **INDICTMENT BY THE**
:
: **GRAND JURY**

DASHAWN E. AYERS
ANSARA M. BROWN
GALEN D. BROOKS
JAMES A. BROOKS
MICHAEL E. DEMBY
JERMAINE DOLLARD
ROBERT O. INGRAM
ANTHONY E. JACKSON
ANTHONY M. JAMES
GERALD A. LANDRY
MARK E. MATTHEWS
JOHN D. PRICE
EDWIN W. SCARBOROUGH
ERIC A. YOUNG

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KENT COUNTY
PROTHONOTARY

The Grand Jury charges DASHAWN E. AYERS, ANSARA M. BROWN, GALEN D. BROOKS, JAMES A. BROOKS, MICHAEL E. DEMBY, JERMAINE DOLLARD, ROBERT O. INGRAM, ANTHONY E. JACKSON, ANTHONY M. JAMES, GERALD A. LANDRY, MARK E.

aka

MATTHEWS, JOHN D. PRICE, EDWIN W. SCARBOROUGH AND ERIC A. YOUNG with the following offense(s):

COUNT 1

IK12-09-0022^W (AYERS)
IK12-09-0219 (G. BROOKS)
IK12-09-0026^W (J. BROOKS)
IK12-09-0218 (BROWN)
IK12-09-0254 (DEMBY)
IK12-09-0271 (DOLLARD)
IK12-09-0029^W (INGRAM)
IK12-09-0034^W (JAMES)
IK12-09-0044^W (LANDRY)
IK12-09-0061^W (MATTHEWS)
IK12-09-0283 (PRICE)
IK12-09-0079 (SCARBOROUGH)
W

RACKETERING, a felony, in violation of Title 11, Section 1503 of the Delaware Code of 1974, as amended.

DASHAWN E. AYERS, GALEN D. BROOKS, JAMES A. BROOKS, ANSARA M. BROWN, MICAEL DEMBY, JERMAINE DOLLARD, ROBERT O. INGRAM, ANTHONY M. JAMES, GERALD A. LANDRY, MARK E. MATTHEWS, JOHN D. PRICE AND EDWIN W. SCARBOROUGH on or about the 22nd day of May, 2012 through the 13th day of June, 2012, in the County of Kent, State of Delaware, did conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity or collection of an unlawful debt while employed by or associated with the enterprise.

COUNT 2

IK12-07-0256 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 22nd day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 3

IK12-09-0080^W (SCARBOROUGH)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 22nd day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 4

IK12-09-0229 (G. BROOKS)
IK12-09-0080^W (SCARBOROUGH)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND EDWIN W. SCARBOROUGH, on or about the 22nd day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 5

IK12-09-0081^W (SCARBOROUGH)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 22nd day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 6

IK12-07-0257 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 23rd day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 7

IK12-09-0087^W (SCARBOROUGH)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 23rd day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 8

IK12-09-0221 (G. BROOKS)
IK12-09-0082 (SCARBOROUGH)
W

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND EDWIN W. SCARBOROUGH, on or about the 23rd day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 9

IK12-09-0083 W (SCARBOROUGH)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 23rd day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 10

I K12-07-0258 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 24th day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 11

I K12-04-0088 W (SCARBOROUGH)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 24th day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 12

I K12-04-0222 (G. BROOKS)
I K12-09-0084 W (SCARBOROUGH)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND EDWIN W. SCARBOROUGH, on or about the 24th day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 13

IK12-09-0085W
(SCARBOROUGH)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

EDWIN W. SCARBOROUGH, on or about the 24th day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 14

IK12-07-0245 (G. BROOKS)
IK12-09-0021W (J. BROOKS)
IK12-07-0025 (DEMBY)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, JAMES A. BROOKS AND MICHAEL E. DEMBY on or about the 26th day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 15

I K12-09-0024^W (AYERS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

DASHAWN E. AYERS on or about the 26th day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 16

I K12-09-0025^W (AYERS)
I K12-07-0263 (G. BROOKS)
I K12-09-0028^W (J. BROOKS)
I K12-07-0026 (DEMBY)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

DASHAWN E. AYERS, GALEN D. BROOKS, JAMES A. BROOKS AND MICHAEL E. DEMBY on or about the 26th day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 17

I K12-09-0255 (DEMBY)
I K12-09-0023 (AYERS)
W

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

MICHAEL E. DEMBY AND DASHAWN E. AYERS on or about the 26th day of May, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 18

I K12-07-0264 (G. BROOKS)
I K12-07-0028 (DEMBY)

POSSESSION OF DRUG PARAPHERNALIA, a misdemeanor in violation of Title 16, Section 4771(a) of the Delaware Code as amended.

GALEN D. BROOKS AND MICHAEL E. DEMBY on or about the 26th day of May, 2012, in the County of Kent, State of Delaware, did knowingly use or possess with intent to use, drug paraphernalia, as defined in 16 Del. Code § 4701(17), to cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4), in violation of Chapter 47, Title 16 of the Delaware Code as amended.

COUNT 19

I K12-09-211 (BROWN)

POSSESSION OF MARIJUANA, a misdemeanor, in violation of Title 16, Section 4764(a) of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly possess marijuana, a controlled substance as described and classified in 16 Del. Code §§ 4701(26) and 4714(d)(19) and the offense occurred in a vehicle.

COUNT 20

IK12-06-0541 (BROWN)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 21

IK12-09-212 (BROWN)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 22

IK12-09-213 (BROWN)

CARRYING A CONCEALED DEADLY WEAPON, a felony, in violation of Title 11, Section 1442 of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly and unlawfully carry concealed upon or about his person, brass knuckles, a deadly weapon, as defined under 11 Del. C. § 222(5).

COUNT 23

I K12-09-214 (BROWN)

POSSESSION OF A DEADLY WEAPON DURING THE COMMISSION OF A FELONY, a felony, in violation of Title 11, Section 1447 of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly and unlawfully possess a deadly weapon during the commission of a felony by possessing a brass knuckles, a deadly weapon, during the commission of Drug Dealing as set forth in Count 20 of this Indictment which is herein incorporated by reference.

COUNT 24

I K12-09-0215 (BROWN)

POSSESSION OF A DEADLY WEAPON BY PERSON PROHIBITED, a felony, in violation of Title 11, Section 1448 of the Delaware Code of 1974 as amended.

ANSARA M. BROWN on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly purchase, own, possess or control brass knuckles, after having pled guilty in Case Number 0505004593 in the Superior Court of the State of Delaware in and for Kent County on March 21, 2006 of the charges of Possession With Intent to Deliver Narcotic Schedule II Controlled Substance.

COUNT 25

IK12-07-0246 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 26

IK12-09-0223 (G. BROOKS)
IK12-09-0216 (BROWN)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND ANSARA M. BROWN, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 27

IK12-09-0224 (G. BROOKS)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974 as amended.

GALEN D. BROOKS on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 28

IK12-09-0217 (BROWN)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

ANSARA M. BROWN, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 29

IK12-07-0259 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 30

IK12-09-0056W (LANDRY)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 31

I K12-09-0225 (G. BROOKS)
I K12-09-0045 (LANDRY)
W

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 32

I K12-09-0046^W (LANDRY)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 33

I K12-07-0260 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 34

I K12-09-0039^w (JAMES)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

ANTHONY M. JAMES, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 35

I K12-09-0226 (G. BROOKS)
I K12-09-0035^w (JAMES)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND ANTHONY M. JAMES, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 36

I K12-09-00 36^W (JAMES)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

ANTHONY M. JAMES, on or about the 31st day of May, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 37

I K12-07-0261 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 38

I K12-09-0040^W (JAMES)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

ANTHONY M. JAMES, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 39

I K12-09-0227 (G. BROOKS)
I K12-09-0037 (JAMES)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND ANTHONY M. JAMES, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 40

I K12-09-0038 (JAMES)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

ANTHONY M. JAMES, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 41

I K12-07-0253 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 42

I K12-09-0057^W (LANDRY)

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 43

I K12-09-0228 (G. BROOKS)
I K12-09-0041^W (LANDRY)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 44

I K12-09-0048^W (LANDRY)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 45

I K12-09-0229 (G. BROOKS)
I K12-09-0049 (LANDRY)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4755 of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 46

I K12-07-0254 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 47

IK12-09-0058^w
(LANDRY)

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 48

IK12-09-0230 (G. BROOKS)
IK12-09-0050^w (LANDRY)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 49

I K12-09-0051^w (LANDRY)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 50

I K12-09-0231 (G. BROOKS)
I K12-09-0052 (LANDRY)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4755 of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 51

I K12-07-0247 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 52

I K12-07-0027 (DEMBY)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

MICHAEL E. DEMBY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 53

I K12-09-0232 (G. BROOKS)
I K12-07-0029 (DEMBY)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND MICHAEL E. DEMBY on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 54

I K12-09-0256 (DEMBY)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

MICHAEL E. DEMBY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 55

I K12-09-0233 (G. BROOKS)
I K12-09-0259 (DEMBY)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND MICHAEL E. DEMBY, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 56

I K12-09-0234 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 57

I K12-06-0638 (PRICE)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

JOHN D. PRICE on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 58

I K12-07-0265 (G. BROOKS)
I K12-06-0639 (PRICE)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND JOHN D. PRICE on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 59

IK12-09-0235 (G. BROOKS)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 60

IK12-09-0236 (G. BROOKS)
IK12-09-0284 (PRICE)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND JOHN D. PRICE, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 61

IK12-07-0249 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 62

IK12-09-0059^W (LANDRY)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 63

IK12-09-0237 (G. BROOKS)
IK12-09-0053 (LANDRY)
W

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 64

IK12-09-0054 (LANDRY)
W

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

GERALD A. LANDRY, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 65

I K12-09-0238 (G. BROOKS)
I K12-09-0055 (LANDRY)
W

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND GERALD A. LANDRY, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 66

I K12-07-0255 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 67

I K12-09-0033 (INGRAM)
W

DRUG DEALING, a felony, in violation of Title 16, Section 4753(1) of the Delaware Code of 1974, as amended.

ROBERT O. INGRAM on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 68

IK12-09-0239 (G. BROOKS)
IK12-09-0030W (INGRAM)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND ROBERT O. INGRAM, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 69

IK12-09-0031W (INGRAM)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

ROBERT O. INGRAM, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 70

IK12-09-0240 (G. BROOKS)
IK12-09-0032 (INGRAM)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4755 of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND ROBERT O. INGRAM, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 10 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 71

IK12-07-0250 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 72

IK12-09-0071 (MATTHEWS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 73

I K12-09-0241 (G. BROOKS)
I K12-09-0062 W (MATTHEWS)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 74

I K12-09-0063 W (MATTHEWS)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 75

IK12-09-0242 (G. BROOKS)
IK12-09-0064 (MATTHEWS)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 76

IK12-07-0251 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 77

IK12-09-0072^W (MATTHEWS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 78

I K12-09-0243 (G. BROOKS)
I K12-09-0065 (MATTHEWS)
W

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 79

I K12-09-0066 (MATTHEWS)
W

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, when intending another person engage in conduct constituting a felony did solicit or otherwise attempt to cause another person to engage in conduct which would constitute the felony or an attempt to commit a Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 80

IK12-09-0244 (G. BROOKS)
IK12-09-0067 (MATTHEWS)
W

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4753(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 2nd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 81

IK12-07-0252 (G. BROOKS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 82

IK12-09-0073W (MATTHEWS)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 83

IK12-09-0245 (G. BROOKS)
IK12-09-0068 (MATTHEWS)
W

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974 as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, when intending to promote or facilitate the commission of a felony, did agree with each other to engage in conduct constituting the felony or an attempt or solicitation to commit the felony of Drug Dealing and one or more conspirators did commit an overt act in the furtherance of said conspiracy.

COUNT 84

IK12-09-0069W (MATTHEWS)

CRIMINAL SOLICITATION SECOND DEGREE, a felony, in violation of Title 11, Section 502 of the Delaware Code of 1974, as amended.

MARK E. MATTHEWS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did solicit or otherwise attempt to cause another person to engage in conduct which would constitute an attempt to commit a Class A Felony or which would establish the other's complicity in its commission or attempted commission.

COUNT 85

IK12-09-0246 (G. BROOKS)
IK12-09-0070 (MATTHEWS)
W

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974, as amended.

GALEN D. BROOKS AND MARK E. MATTHEWS, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 86

IK12-09-0268 (DOLLARD)
IK12-09-0278 (YOUNG)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4752(3) of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD AND ERIC A. YOUNG on or about the 13th day of June, 2012, in the County of New Castle, State of Delaware, did knowingly possess 25 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 87

IK12-09-0270 (DOLLARD)
IK12-09-0280 (YOUNG)

DRUG DEALING, a felony, in violation of Title 16, Section 4752(1) of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD AND ERIC A. YOUNG on or about the 13th day of June, 2012, in the County of New Castle, State of Delaware, did knowingly possess with intent to deliver 20 grams or more of cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 88

IK12-09-0269 (DOLLARD)
IK12-09-0279 (YOUNG)

CONSPIRACY SECOND DEGREE, a felony, in violation of Title 11, Section 512 of the Delaware Code of 1974, as amended.

JERMAINE DOLLARD AND ERIC A. YOUNG on or about the 13th day of June, 2012, in the County of New Castle, State of Delaware, did when intending to promote the commission of a felony, did agree with each other to engage in conduct constituting the felony of Aggravated Possession and did commit an overt act in the furtherance of said conspiracy.

COUNT 89

I K12-09-0272 (DOLLARD)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess cocaine or any mixture containing cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4).

COUNT 90

I K12-09-0273 (DOLLARD)

POSSESSION OF DRUG PARAPHERNALIA, a misdemeanor in violation of Title 16, Section 4771(a) of the Delaware Code as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly use or possess with intent to use, drug paraphernalia, as defined in 16 Del. Code § 4701(17), to carry or contain cocaine, a controlled substance as described in 16 Del. Code § 4716(b)(4), in violation of Chapter 47, Title 16 of the Delaware Code as amended.

COUNT 91

I K12-09-0274 (DOLLARD)

POSSESSION OF A FIREARM BY PERSON PROHIBITED, a felony, in violation of Title 11, Section 1448 of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly purchase, own, possess or control a firearm after having been convicted of a felony in Case Number 0104018389 in the Superior Court of the State of Delaware in and for New Castle County on October 1, 2002 of the charge of Possession With Intent to Deliver Narcotic Schedule II.

COUNT 92

I K12-09-0275 (DOLLARD)

POSSESSION OF A FIREARM BY PERSON PROHIBITED, a felony, in violation of Title 11, Section 1448 of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly purchase, own, possess or control a firearm after having been convicted of a felony in Case Number 0104018389 in the Superior Court of the State of Delaware in and for New Castle County on October 1, 2002 of the charge of Possession With Intent to Deliver Narcotic Schedule II.

COUNT 93

I K12-09-0276 (DOLLARD)

POSSESSION OF A FIREARM BY PERSON PROHIBITED, a felony, in violation of Title 11, Section 1448 of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly purchase, own, possess or control a firearm after having been convicted of a felony in Case Number 0104018389 in the Superior Court of the State of Delaware in and for New Castle County on October 1, 2002 of the charge of Possession With Intent to Deliver Narcotic Schedule II.

COUNT 94

I K12-09-0277 (DOLLARD)

POSSESSION OF A FIREARM AMMUNITION BY PERSON PROHIBITED, a felony, in violation of Title 11, Section 1448 of the Delaware Code of 1974 as amended.

JERMAINE DOLLARD, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly purchase, own, possess or control firearm ammunition after having been convicted of a felony in Case Number 0104018389 in the Superior Court of the State of Delaware in and for New Castle County on October 2, 2002 of the charge of Possession With Intent to Deliver Narcotic Schedule II.

COUNT 95

I K12-09-0288 (G. BROOKS)

POSSESSION OF DRUG PARAPHERNALIA, a misdemeanor in violation of Title 16, Section 4771(a) of the Delaware Code as amended.

GALEN D. BROOKS, on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly use or possess with intent to use, drug paraphernalia, as defined in 16 Del. Code § 4701(17), to carry or contain marijuana, a controlled substance as described and classified in 16 Del. Code §§ 4701(26) and 4714(d)(19), in violation of Chapter 47, Title 16 of the Delaware Code as amended.

COUNT 96

I K12-06-0594 (JACKSON)

DRUG DEALING, a felony, in violation of Title 16, Section 4754(1) of the Delaware Code of 1974, as amended.

ANTHONY E. JACKSON on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess with intent to deliver marijuana, a controlled substance as described and classified in 16 Del. Code §§ 4701(26) and 4714(d)(19).

COUNT 97

I K12-06-0595 (JACKSON)

POSSESSION OF DRUG PARAPHERNALIA, a misdemeanor in violation of Title 16, Section 4771(a) of the Delaware Code as amended.

ANTHONY E. JACKSON on or about the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly use or possess with intent to use, drug paraphernalia, as defined in 16 Del. Code § 4701(17), to weigh marijuana, a controlled substance as described and classified in 16 Del. Code §§ 4701(26) and 4714(d)(19), in violation of Chapter 47, Title 16 of the Delaware Code as amended.

COUNT 98

I K12-09-0281 (JACKSON)

AGGRAVATED POSSESSION, a felony, in violation of Title 16, Section 4756 of the Delaware Code of 1974, as amended.

ANTHONY E. JACKSON, on or about the 3rd day of June, 2012, in the County of Kent, State of Delaware, did knowingly possess 175 grams or more of marijuana or any mixture containing marijuana, a controlled substance as described in 16 Del. Code § 4714(d)(19).

COUNT 99

I K12-09-0247 (G. BROOKS)

MONEY LAUNDERING, a felony in violation of Title 11, Section 951 of the Delaware Code as amended.

GALEN D. BROOKS on or between the 21st day of May and the 14th day of June, 2012, in the County of Kent, State of Delaware, did knowingly acquire or maintain an interest in, conceal, possess, transfer, or transport the proceeds of criminal activity, or conduct, supervise or facilitate a transaction involving the proceeds of criminal activity.

A TRUE BILL

Joseph R. Biden, III
ATTORNEY GENERAL

Nicole S. Hartman
NICOLE S. HARTMAN
DEPUTY ATTORNEY GENERAL

Wayne C. Lehman
(FOREPERSON)

Sam A. Subb
(SECRETARY)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE

VS.

DASHAWN E AYERS

Alias: No Aliases

DOB: [REDACTED] 1979
SBI: 00507020

CASE NUMBER:
1208001950

CRIMINAL ACTION NUMBER:
IK12-09-0024W
DDEAL TIER 4 (F)
IK12-09-0023W
TIER 5 POSS (F)
IK12-09-0025W
CONSP 2ND (F)

COMMITMENT

Nolle Prosequi on all remaining charges in this case

SENTENCE ORDER

NOW THIS 25TH DAY OF NOVEMBER, 2013, IT IS THE ORDER OF
THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged.
The defendant is to pay the costs of prosecution and all
statutory surcharges.

AS TO IK12-09-0024-W : TIS
DDEAL TIER 4

Effective September 6, 2012 the defendant is sentenced
as follows:

- The defendant is placed in the custody of the Department
of Correction for 25 year(s) at supervision level 5
 - Suspended after 8 year(s) at supervision level 5
 - Followed by 6 month(s) at supervision level 4 WORK
RELEASE
 - Hold at supervision level 5
 - Until space is available at supervision level 4 WORK
RELEASE
 - Followed by 18 month(s) at supervision level 3
- **APPROVED ORDER** 1 April 3, 2014 09:04

Ex. B

STATE OF DELAWARE
VS.
DASHAWN E AYERS
DOB: ██████████1979
SBI: 00507020

The first 2 years of this sentence is a mandatory term of incarceration pursuant to DE1647520001FB .

Probation is concurrent to any probation now serving.

AS TO IK12-09-0023-W : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5
- Suspended after 2 year(s) at supervision level 5
- Followed by 18 month(s) at supervision level 3

The first 2 years of this sentence is a mandatory term of incarceration pursuant to DE1647520003FB .

Probation is concurrent to criminal action number IK12-09-0024 .

AS TO IK12-09-0025-W : TIS
CONSP 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5
- Suspended for 1 year(s) at supervision level 2

Probation is concurrent to criminal action number IK12-09-0024 .

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
DASHAWN E AYERS
DOB: [REDACTED] 1979
SBI: 00507020

CASE NUMBER:
1208001950

The Defendant is to pay all financial obligations pursuant to a schedule established by probation officer.

Have no contact with Galen Brooks

Have no contact with Gerald Landry

Have no contact with Anzara Brown

Have no contact with James Brooks

Have no contact with Michael Demby

Have no contact with Jermaine Dollard

Have no contact with Robert Ingram

Have no contact with Anthony Jackson

Have no contact with Anthony James

Have no contact with Mark Matthews

Have no contact with John Price

Have no contact with Edwin Scarborough

Have no contact with Eric Young

Be evaluated for substance abuse and follow any recommendations for counseling, testing or treatment deemed
APPROVED ORDER 3 April 3, 2014 09:04

STATE OF DELAWARE
VS.
DASHAWN E AYERS
DOB: ██████████1979
SBI: 00507020

appropriate.

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

JUDGE JAMES T VAUGHN JR.

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
DASHAWN E AYERS
DOB: [REDACTED] 1979
SBI: 00507020

CASE NUMBER:
1208001950

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	330.00
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	3.00
DELJIS FEE ORDERED	3.00
SECURITY FEE ORDERED	30.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	45.00
SENIOR TRUST FUND FEE	
<hr/>	
TOTAL	611.00

AGGRAVATING-MITIGATING

STATE OF DELAWARE

VS.

DASHAWN E AYERS

DOB: [REDACTED] 1979

SBI: 00507020

CASE NUMBER:

1208001950

AGGRAVATING

PRIOR VIOLENT CRIM. ACTIVITY

NEED FOR CORRECTIONAL TREATMENT

CERTIFICATION OF SERVICE

The undersigned certifies that on April 3, 2014, he caused the attached *State's Answering Brief* to be delivered via Lexis/Nexis File and Serve to the following person:

Benjamin A. Schwartz, Esq.
Schwartz & Schwartz
Attorneys at Law, P.A.
1140 South State Street
Dover, DE 19901

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella
Deputy Attorney General
ID No. 3549
Department of Justice
820 North French Street
Wilmington, DE 19801
(302) 577-8500