



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL E. DEMBY,

Defendant-below/
Appellant,

vs.

STATE OF DELAWARE,

Plaintiff-below/
Appellee.

* No.: 667, 2013
*
* Court Below:
* Superior Court of the
* State of Delaware,
* in and for Kent County,
* Delaware
*
* C.A. No.: 1206011513
* IK12070025, IK12070026,
* IK12070028, IK12090255
*
*

CORRECTED

APPELLANT'S OPENING BRIEF ON APPEAL

s/s Andre M. Beauregard
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March 28, 2014

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NATURE AND STAGE OF PROCEEDINGS

Defendant Michael E. Demby ("Demby") was arrested as a result of a Delaware State Police investigation into a drug trafficking organization in Kent County, Delaware run by Galen Brooks. The investigation involved ongoing surveillance involving the wiretapping of telephones. The surveillance led to Demby being charged with Drug Dealing (2 counts), Conspiracy in the Second Degree (2 counts), Aggravated Possession (2 counts), Possession of Drug Paraphernalia, and Criminal Solicitation. Demby was tried with co-defendant DaShawn Ayers¹.

Prior to trial, the Court denied Demby's Motion to Suppress evidence obtained as a result of the wiretaps. (A-3),(A-4) In addition, Demby's counsel filed a Motion in Limine to bar the admission of all recordings involving co-defendants and witness statements which was denied.

(A-4)

Similarly, at trial, over Demby's objections, the Court permitted these wiretap recordings of co-defendants and witness statements into evidence.

At the conclusion of trial on October 9, 2014, the jury found Demby guilty of Drug Dealing, Conspiracy in the Second Degree, and Aggravated

¹ Co-Defendant DaShawn Ayers filed his appeal brief on March 1, 2014. (No. 646, 2013) Both defendants argue similar issues. Appellant Demby will be filing a Motion to Consolidate his arguments with Ayers without objection from counsel.

Possession. (A-96, 97) Demby was found not guilty of the second set of charges (Counts 5-8) of Drug Dealing, Conspiracy, Criminal Solicitation, and Aggravated Possession.

After the jury verdict, Demby's counsel timely filed a Motion for Judgment of Acquittal and/or in the Alternative Motion for a New Trial because Demby's conviction of Aggravated Possession is a lesser included offense of his Drug Dealing offense which was denied. (A-5), (A-6) Defense counsel timely filed his Notice of Appeal after sentencing. (A-6).

SUMMARY OF ARGUMENT

1. It was a violation of Demby's right to confront the State's witnesses against him when the trial court admitted the wiretap recording into evidence. Both the recordings and the State's expert interpretation of the recordings were decisive to the jury's conviction of Demby which should be reversed.
2. It was a violation of Demby's Double Jeopardy rights to permit him to be tried, convicted, and sentenced on both Drug Dealing and Aggravated Possession because the latter is a lesser included offense of the former.

STATEMENT OF FACTS

A. Investigation into Galen Brooks

During the course of an investigation into drug trafficking by Galen Brooks, the police came to believe that Michael Demby was an associate of Brooks. (A-56), (A-21) Through wiretap recordings, the police believed that alleged drug deals involving Demby were scheduled on May 26, 2012 and June 2, 2012. (A-86)

B. Surveillance at Red Oak Drive and McKee Shopping Center on May 26, 2012.

Police believed Demby was involved with a drug deal scheduled to take place on May 26, 2012 at McKee Shopping Center in Dover, Delaware. (A-31) Initially, Delaware State Police established surveillance at 106 Red Oak Drive in Dover, Delaware and then McKee Shopping Center. (A-31) Police observed Michael E. Demby and James Brooks at the Red Oak residence. (A-32) James Brooks is the father of Galen Brooks. (A-66)

Police observed Demby and Brooks drive from the Red Oak residence to the McKee Shopping Center in a red Honda Civic. (A-32) Prior to leaving, police observed an unidentified black man place an unknown object into the trunk of the Honda. (A-79) After parking, police observed Demby leaving the vehicle and enter a Dodge Caravan registered to Dashawn Ayers. (A-60) The police could only identify the van's driver as a black

male. (A-68) At the same time Demby got inside the van, Brooks entered a liquor store located at the shopping center. (A-32) After a few minutes, Demby exited the van and Brooks exited the liquor store getting back into the Honda. The Honda drove back towards the Red Oak Drive residence.

A few minutes after the Honda left, the Dodge Van leaves the shopping center and is stopped by police on Hazletville Road. (A-34)

Officer Valeski of the Delaware State Police was instructed by detectives in the investigation to stop the van under the false pretense that its registration was expired. (A-80) Officer Valeski observed no drugs or money during the traffic stop. (A-81), (A-82) Defendant Ayers fled from the traffic stop after providing his driver's license and registration. (A-61) The traffic stop did not lead to a search of the vehicle or person and no drugs or money were ever seen or found. (A-84) Later, Ayers voluntarily turned himself into police for the outstanding warrants. (A-86)

Later, Demby purportedly contacted Galen Brooks and said the transaction was completed for \$2,300.00. (A-62) Brooks told Demby to take a couple hundred and give the rest of the money to Valerie Brooks, Galen Brooks' mother. (A-62) Afterwards, Brooks contacted Ms. Brooks to make sure that Demby provided the money to her. (A-63) Police never confirmed whether Valerie Brooks ever received the funds or what the money was for.

Throughout the entire surveillance involving the events of May 26, 2012, police did not witness drugs exchange between the parties nor any illegal activity. (A-60) Police never retrieved any money, guns, or drugs from the alleged transaction. (A-67), (A-84)

C. Surveillance of 55 Huntley Circle on June 2, 2012

On June 2, 2012, police conducted surveillance at 55 Huntley Circle in Dover. (A-72) Throughout the day, police also witnessed twelve black males at the residence between 1:55 pm and 5:08 pm that day. (A-75) The police allegedly observed a meeting between Galen Brooks and Demby. (A-75) During the meeting, police allegedly witnessed Brooks give Demby an undetermined amount of money. (A-76)

After the meeting, Demby drove to Carroll's Corner Shopping Center. (A-87) At Carroll's Corner, Demby met with an individual in a Silver Ford Expedition. (A-88) Demby retrieved an orange Nike shoebox from the individual and left. (A-89) At no point did police witness an exchange of money or drugs. (A-90), (A-91) Demby returned to 55 Huntley Circle with the orange Nike shoebox. (A-77) The jury found Demby not guilty of the charges associated with these allegations.

D. Demby's June 14 Arrest by SWAT Team

On June 14, 2012, Demby was arrested along with Galen Brooks by the State Police's Special Operation Response Team (SORT). (A-92) The SORT team pulled over a vehicle occupied by Galen Brooks and Demby. Despite the large scale plan to stop the vehicle, the police found no money or drugs on either man or in the vehicle. (A-94)

E. Police Interpretation of Wiretap Recordings

During trial, the State relied on Special Federal Agent Jeff Dunn of Drug Enforcement Agency to provide expert testimony concerning wiretapped recordings introduced into evidence regarding the May 26 and June 2 events (A-83) The State used Dunn to decode terminology of drug dealers for the jury. (A-84) Dunn testified that it was common for drug dealers to use "coded language" when speaking about transactions. Dunn testified that the use of the term "three" meant three grams of cutting material to add to cocaine. (A-83) Cutting material is a white powdery texture similar to cocaine that is added to actual cocaine to increase a drug dealer's profits. (A-84) He also testified that the term "scizzy" was used by drug dealers to describe a digital scale. (A-82) In addition, Sgt. Lloyd of the Delaware State Police and lead detective in this matter opined that the term, "the one" referenced one ounce of cocaine. (A-70) Consequently, during one

phone call, Brooks and Demby discussed "plugs". (A-71) However, police expert could not explain what the term "plugs" meant in the context of the phone call. (A-84), (A-71)

ARGUMENT

I. THE TRIAL COURT IMPROPERLY ADMITTED THE WIRETAP RECORDINGS INTO EVIDENCE WHICH WERE DECISIVE TO DEMBY'S CONVICTION.

QUESTION PRESENTED

Does the Confrontation Clause of the 6th Amendment to U.S Constitution, Article I, Section 7 of the Delaware Constitution, and Rule 801(d)(2)(e) of the Delaware Rules of Evidence require the exclusion of wiretap recording of absentee witnesses when those statements were essential to the conviction of the Defendant?

Defense counsel objected to the admission of the recordings on several fronts. First, a written Motion to Suppress the wiretap recordings was filed. (A-3). Secondly, a Motion in Limine was filed seeking to prohibit admission of the recordings. (A-4) Lastly, defense counsel objected to the State's application to lay the foundation for conspiracy in order to introduce the wiretaps by calling Detective Lloyd of the Delaware State Police to testify outside the presence of the jury. (A-28), (A-29)

STANDARD AND SCOPE OF REVIEW

Violations of the United States and/or Delaware constitutions are subject to de novo review. Hall v. State, 788 A.2d 118 (Del. 2001).

MERITS OF THE ARGUMENT

Demby was deprived his right to a fair trial when the trial court improperly allowed “out-of-court” statements from co-conspirators without following the proper procedure and in violation of the Confrontation Clause rights pursuant to the United States and Delaware Constitutions.

A. The Trial Court failed to follow proper procedure in admitting the wiretap recordings.

The wiretap recordings were improperly admitted pursuant to DRE 801(d)(2)(e).

Rule 801(d)(2)(e) states:

Article VIII. Hearsay

Rule 801. Definitions.

The following definitions apply under this article:

(d) Statements which are not hearsay. A statement is not hearsay if:

*

(2) Admission by party-opponent. 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 the preponderance of the evidence to the satisfaction of the court.**

This Court has repeatedly noted that construction of rules by the federal judiciary are accorded “great persuasive weight” in its

interpretation of the Delaware counterparts. Hoffman v. Cohen, 538 A.2d 1098 (Del. 1988)

“A district court faced with a challenge to the admission of a co-conspirator’s statement must provisionally admit the statement and then wait until the end of the trial to consider whether, in light of all the evidence, the following four conditions are satisfied by the preponderance of the evidence: (1) a conspiracy existed; (2) the defendant was a member of the conspiracy; (3) the declarant was also a member of the conspiracy; and (4) the declarant’s statement was made in furtherance of the conspiracy.” U.S. v. Diaz, 670 F.3d 332, 348 (1st Cir. 2012) In addition, “[t]he declarants’ statement alone cannot satisfy the preponderance of the evidence standard; there must be some independent corroboration. U.S. v. Diaz at 348 citing United States v. Portela, 167 F.3d 687, 703 (1st Cir. 1989)

Here, over defense counsel’s objection, the trial court admitted the wiretapped recorded statement of alleged co-conspirators² by conducting voir dire with Detective Lloyd at a hearing outside of the jury and made a broad determination that a conspiracy existed.

² Defense counsel stated, “...I guess we’re asking for a mini determination by the Court whether or not the proper foundation is laid but that’s really part of the trial process and I don’t believe there should be a mini-hearing to determine whether something’s going to happen or not unless we have--- its goes through the process of being in front of the trier of facts with the burden on the State to prove by the preponderance. (B-4) thru (B-5)

The trial court failed to follow the proper procedure by making specific determinations concerning the four conditions for each declarant's statement.

The trial court was required to provisionally admit the statements and then wait until the end of the trial to consider whether, in light of all the evidence that a conspiracy existed. (A-63)

Although the trial court determined that a conspiracy existed, it offered no basis for its reasoning nor did it determine the scope of the conspiracy.

Furthermore, the trial court failed to make an individual determination as to whether each individual defendant was a member of the conspiracy. The two defendants were jointly tried in the case and therefore required an individual determination for each on whether they participated in the conspiracy.

Consequently, the trial judge failed to rule on whether each declarant's out of court testimony was being offered was in fact a member of the conspiracy. The trial court was required to issue findings as to whether Galen Brooks, Valerie Brooks and James Brooks were members of this conspiracy.

Likewise, the trial court failed to make a determination as to whether each out of court statement was made in furtherance of the conspiracy.

Therefore, the trial court failed to cite any corroborating evidence that Demby was a member of a conspiracy outside the recordings. The State presented no evidence of actual drugs nor money from the sale of drugs. During both May and June events, the State's surveillance saw no drugs being exchanged, containers or paraphernalia, and none were ever found by the police throughout the entire investigation. Without the recordings, the State presented scant evidence that any criminal activity occurred.

B. Admission of the wiretap recordings violated Demby's 6th Amendment Rights to Confrontation Under the United States and Delaware Constitutions.

"In all criminal prosecutions, the accused shall enjoy the right... to be confronted with witnesses against him". U.S. Const. Amend. VI. This applies to the States via the 14th Amendment. Pointer v. Texas, 380 U.S. 400, 403 (1965) In Delaware, "[i]n all criminal prosecutions, the accused hath a right...to meet the witnesses in their examination face to face". Delaware Constitution, Article I, Section 7.

A certain threshold level of cross-examination is required by both the Delaware and United States constitutions. Smith v. State, 913 A.2d 1197(Del.2006) "[A] primary interest secured by [the Confrontation Clause

of the Sixth Amendment] is the right of cross-examination....” Douglas v. Alabama, 380 U.S. 415, 418, 85 S.Ct. 1074, 1076, 13 L.Ed.2d 934 (1965).

Cross-examination is the “principal means by which the believability of a witness and the truth of his testimony are tested.” Davis v. Alaska, 415 U.S. 308 (1974).

In Crawford v. Washington, 541 U.S. 36 (2004), the majority opinion stated that the Confrontation Clause of the 6th Amendment required testimonial hearsay be subject to cross examination.

Throughout Demby’s trial, the State provided multiple witnesses to translate the alleged “drug lingo” on the wiretap recordings. For instance, Special Federal Agent Jeff Dunn testified that drug dealers use “coded language” when speaking about transactions and he was there to explain it to the jury. Dunn testified that the term “three” meant three grams of cutting material to add to cocaine. In addition, the State would play a recording and then ask Det. Lloyd to interpret the language for the jury. In addition, Sgt. Lloyd opined that the term, “the one” referenced one ounce of cocaine. (A-70)

Defense counsel was unable to cross examine the actual declarants regarding the language in the recordings. During one particular phone call, the term “plugs” was used. None of the police officers could explain the

term. In addition, defense counsel had no opportunity to question the declarant the meaning behind the terminology. Ultimately, the State was using the interpreters to tell the jury that the substance being referred to was cocaine.

C. The Trial Court's Admission of the Wiretap was not harmless error.

The test for harmless error is set forth in Chapman v. California, 386 U.S. 18(1967) where the United State Supreme Court held that reversal is required if the reviewing court cannot conclude that the error was "harmless beyond a reasonable doubt." Id at 24. In Sullivan v. Louisiana 508 U.S. 275 (1993), the United States Supreme Court held "[t]he inquiry [under *Chapman*] is not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether the guilty verdict actually rendered in *this* trial was unattributable to the error.

In Holmes v. State, 11 A.3d 227, 2010 WL 5043910 (Del. Dec. 9, 2010) this Court explained that 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."

Here, the out of court statements were the principal factor in Demby's conviction. Despite the State's surveillance of both events, no witness

testified to seeing any drugs change hand. The State produced no seized drugs or money. The out of court testimony and the State' interpretation of the language used on those recordings was crucial to their case.

Further, the Deputy Attorney General emphasized the importance of the recordings by playing them during closing argument;

“You learned from Agent Dunn on the stand that Michael Demby and Galen Brooks were discussing cocaine and he gave you the reasons for why he came to that conclusion.” (A-95)

“He also could tell that it was cocaine because Bones was getting a half gram for help as his payment.”

The recordings allowed the State to inform the jury that the declarants on the tapes were discussing drug deals. Without the recordings, the jury could not have reached that conclusion.

**II. DEMBY'S CONVICTION OF BOTH DRUG DEALING AND
AGGRAVATED POSSESSION VIOLATED DOUBLE JEOPARDY.**

QUESTION PRESENTED

Were Michael Demby's double jeopardy rights violated when he was prosecuted and ultimately convicted for both drug dealing and aggravated possession of drugs?

Demby's defense counsel filed a Motion for Judgment of Acquittal pursuant to the issue of double jeopardy. Which was denied by the trial court. (A-4)

STANDARD AND SCOPE OF REVIEW

Challenges arising from constitutionally protected rights are to be reviewed de novo. Capano v. State, 781 A.2d 556 (2001)

MERITS OF THE ARGUMENT

The 5th Amendment of the United States Constitution and the Delaware Constitution, Article I protect individuals from being subject to the same offence twice.

A. Demby's conviction for both Drug Dealing and Aggravated Possession fails the Blockburger rule.

In Blockburger v. U.S., 284 U.S. 299 (1932), the United States Supreme Court set an important standard to prevent double jeopardy. Double jeopardy is violated when the same act or transaction creates a violation of

two distinct laws. The test is applied to decide whether there are two different offenses or only one depends upon whether each provision requires proof of a fact which the other does not. Id at 342.

This Court has previously held that a defendant's dual convictions of two drug offenses including a lesser-included offense violate double jeopardy. Blake v. State, 65 A.3d 557 (Del. 2013) citing McRae v. State of Delaware³. The Court issued a similar holding in Hickman v. State, 651 A2d 788 (Del.1994)stating, "[A] conviction for both Trafficking of Cocaine and the lesser-included offense of Possession of Cocaine violated double jeopardy.

Here, Demby's conviction of both drug dealing and the lesser included offense of aggravated possession (for the same occurrence) violate double jeopardy.

The elements for each:

Drug Dealing (Count 1)

Aggravated Possession (Count 3)

Demby possessed...	Demby possessed...
with intent to deliver...	
a controlled substance...	a controlled substance...
20 grams or more...	25 grams or more...

³ McRae v. State of Delaware, 782 A.2d 536, 2001 WL 1175349, at *4 (Del. 2001)

Counts 1 and 3 involve the same parcel of cocaine. Aggravated possession did not require any additional elements and therefore his conviction of such violated Demby's rights against double jeopardy.

B. Demby could not be charged and convicted for both Drug Dealing or Aggravated possession pursuant to 16 Del. C. §4752.

"When cumulative sentences are imposed in a single trial, the Double Jeopardy Clause operates to prevent the sentencing court from meting out a greater punishment than that intended by the legislature." LeCompte v. State, 516 A.2d 898, 900 (Del. 1986) (citing Missouri v. Hunter, 459 U.S. 359, 366 (1983)). The key question presented by a claim of double jeopardy that is based on multiple punishments is whether the General Assembly intended to impose more than one punishment for a single occurrence of criminal conduct. Missouri v. Hunter, 459 U.S. at 366-68. Courts ascertain and give effect to the intent of the General Assembly as clearly expressed in the language of a statute. A & P Stores v. Hannigan, 367 A.2d 641 (Del. 1976); Keys v. State, 337 A.2d 18 (Del. 1975).

The language of 16 Del. C. §4752 is clear;

§ 4752 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;
- (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.

The statute distinguishes between subsections (1)(2)(3)(4) and (5).

Possession of a controlled substance in a Tier 2 quantity requires two aggravating factors to be considered a Class B Felony. Therefore, the intention of the statute was for an individual to be charged with either drug dealing or aggravated possession but not both.

Previously, a Delaware Superior Court has held that a motion for judgment of acquittal is appropriate where a criminal defendant was convicted of both the primary offense and a lesser included offense. State v. Tilghman, 2004 Del. Super. LEXI 28 (Del. Super. Ct. Jan. 20, 2009) In State v. Tilghman, the Court decided that since Aggravating Menacing was a lesser included offense of Robbery in the First Degree which merged into that crime, that the defendant was improperly convicted of both crimes.

Here, Demby's convictions for Count 1 - Drug Dealing and Count 3 - Aggravated Possession involve a single event that occurred on May 26, 2012, the same parties and the same quantity of the substance. Defendant Demby's conviction for Aggravated Possession is a lesser included offense of his Drug Dealing offense. Therefore, it is impermissible to punish Demby for both Drug Dealing and Aggravated Possession since one of the offenses should be considered a lesser included offense.

Considering the lack of evidence in this case and the public policy against double jeopardy, any ruling by the Court that the Blockburger Rule has been violated should result in the reversal of Demby's conviction for Drug Dealing.

C. Demby's Conviction for Drug Dealing or Aggravated Possession Violated the Multiplicity Doctrine

In State of Delaware v. Williams, 796 A.2d 1281 (Del. 2002), this Court ruled that a defendant may not be charged two times with possession of a controlled substance, under the same statute when the offenses occurred at the same time, in the same location and with one intended purpose. In Williams, this Court decided that charging someone multiple times under the same statute violates double jeopardy and the doctrine of multiplicity. Multiplicity is "the charging of a single offense in more than one count of an

indictment." Feddiman v. State of Delaware, 558 A.2d 278 (Del. 1989)

Dividing one offense into "multiple counts of an indictment violates the double jeopardy provisions of the constitutions of the State of Delaware and of the United States." Id.

Here, Demby's charges of both Drug Dealing and Aggravated Possession violate the doctrine of multiplicity.

Demby is not being punished for "separate and distinct acts" that violated the same statute. Similar to Williams, Demby did not formulate two separate intents for Aggravated Possession and Drug Dealing.

Demby was charged multiple times with both Drug Dealing and Aggravated Possession pursuant to the same statute, 16 Del. C. §4752. There is no doubt that both charges stem from the same occurrence in the same location and with one intended purpose. By convicting Demby of two offenses from the same statute for the same occurrence, the State is allowed to substantially increase Demby's penalty for the same crime.

CONCLUSION

The trial court's errors below violated important constitutional rights of Demby resulting in his conviction. Allowing the State to introduce critical "out-of-court" testimony not subject to the scrutiny of cross examination violates his right to a fair trial. Secondly, the State should not be allowed to try a defendant for two different crimes from the same statute for the same occurrence in order to extract a longer sentence. For the reasons stated above, the Appellant, Michael E. Demby requests that his convictions be reversed.

/s/ André M. Beauregard
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Filed: March 20, 2014

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

STATE OF DELAWARE

VS.

MICHAEL E DEMBY

CERTIFIED

AS A TRUE COPY

ATTEST: ANNETTE D. ASHLEY, PROTHONOTARY

BY: Ghonda Long

Alias: See attached list of alias names DATE: 3-28-14

DOB: 01/05/1973

SBI: 00248813

CASE NUMBER:

1206011513

CRIMINAL ACTION NUMBER:

IK12-07-0025

DDEAL TIER 4(F)

IK12-09-0255

TIER 5 POSS(F)

IK12-07-0026

CONSP 2ND(F)

IK12-07-0028

POSS DRUG PARAP(M)

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 IK12-07-0025- : TIS

DDEAL TIER 4

Effective June 14, 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 5 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

APPROVED ORDER 1 March 28, 2014 07:03

STATE OF DELAWARE

VS.

MICHAEL E DEMBY
DOB: 01/05/1973
SBI: 00248813

- Followed by 18 month(s) at supervision level 3

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 IK12-09-0255- : 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 3 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 IK12-07-0025 .

AS TO IK12-07-0026- : 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 IK12-07-0025 .

AS TO IK12-07-0028- : TIS
POSS DRUG PARAP

The defendant is to pay a fine in the amount of \$500.00 plus all statutory surcharges and fees (see attachment).

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE

VS.

MICHAEL E DEMBY

DOB: 01/05/1973

SBI: 00248813

CASE NUMBER:

1206011513

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.

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

Have no contact with Dashawn Ayers

Have no contact with Gerald Landry

Have no contact with Anzara Brown

Have no contact with Galen Brooks

Have no contact with James Brooks

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

APPROVED ORDER

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March 28, 2014 07:03

STATE OF DELAWARE

VS.

MICHAEL E DEMBY

DOB: 01/05/1973

SBI: 00248813

Have no contact with Eric Young

Be evaluated for substance abuse and follow any
recommendations for counseling, testing or treatment deemed
appropriate.

JUDGE JAMES T VAUGHN JR.

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
MICHAEL E DEMBY
DOB: 01/05/1973
SBI: 00248813

CASE NUMBER:
1206011513

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	75.00
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	500.00
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	345.00
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	90.00
VIDEOPHONE FEE ORDERED	4.00
DELJIS FEE ORDERED	4.00
SECURITY FEE ORDERED	40.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	60.00
SENIOR TRUST FUND FEE	
<hr/>	
TOTAL	1,318.00

APPROVED ORDER

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March 28, 2014 07:03

SURCHARGES

STATE OF DELAWARE
VS.

MICHAEL E DEMBY
DOB: 01/05/1973
SBI: 00248813

CASE NUMBER:
1206011513

<u>CRIM ACTION #</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
IK12-07-0028	DRTE	75.00
IK12-07-0028	VCF	90.00

LIST OF ALIAS NAMES

STATE OF DELAWARE

VS.

MICHAEL E DEMBY

DOB: 01/05/1973

SBI: 00248813

CASE NUMBER:

1206011513

MICHAEL BROOKS

MICHAEL E BROOKS

JUNIUS DEMBY

MICHAEL E DEMBY AKA BROOKS

ANDREA SCOTT

MIKE E BROOKS

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
MICHAEL E DEMBY
DOB: 01/05/1973
SBI: 00248813

CASE NUMBER:
1206011513

AGGRAVATING

PRIOR VIOLENT CRIM. ACTIVITY
REPETITIVE CRIMINAL CONDUCT
NEED FOR CORRECTIONAL TREATMENT
CUSTODY STATUS AT TIME OF OFFENSE
LACK OF AMENABILITY