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IN THE SUPREME COURT FOR THE STATE OF DELAWARE

ISAIAH W. MR. MCCOY,	)	**Nos. 558, 2012 and 595, 2012**
Appellant,	)	**(CONSOLIDATED)**
	)	
	)	**Court Below: Superior Court**
V.	)	**of the State of Delaware, in and for**
	)	**Kent County**
	)	
	)	**Cr. ID. No. 1005008059A**
STATE OF DELAWARE,	)	
Appellee.	)	
	)	

CORRECTED OPENING BRIEF FOR APPELLANT

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Dated: April 14, 2014

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NATURE OF PROCEEDINGS

This Appeal stems from the conviction and death sentence of Isaiah McCoy ("Mr. McCoy"). On July 6, 2010, the State filed an Indictment charging Mr. McCoy with seven offenses: 1) 1st degree murder, intentionally causing the death of another person under 11 *Del. C.* § 636; 2) 1st degree murder, recklessly causing the death of another person while engaged in the commission of or the attempt to commit robbery first degree under 11 *Del. C.* § 636; 3) Possession of a firearm during the commission of a felony (murder first degree) under 11 *Del. C.* § 1447(a); 4) First degree robbery under 11 *Del. C.* § 832(a); 5) Possession of a firearm during commission of a felony (robbery first degree) under 11 *Del. C.* § 1447(a); 6) Second degree conspiracy under 11 *Del. C.* § 512; and 7) Motor vehicle theft under 11 *Del. C.* § 841(a).[1]

On January 9, 2012, the parties began jury selection in the Superior Court of the State of Delaware, in and for Kent County, the Honorable William L. Witham, Jr. presiding; however, on January 23, the case was continued, and the court set jury selection for May 14, 2012. On May 15, Mr. McCoy applied to proceed *pro se* and the court allowed him to proceed *pro se* with standby counsel. On May 24, the parties completed jury selection.

[1] The original charges included Kidnapping in the Second Degree and Theft of a Motor Vehicle, which the State entered a *nolle prosequi.* A charge of Possession of a Firearm by a Person Prohibited was severed by the State. *See* A00001.

On June 29, 2012, Mr. McCoy was found guilty as to all but Count 7.[2] On July 5, Mr. McCoy filed a motion for a new trial under Super. Ct. Crim. R. 33, which the trial court denied in a written opinion.

Under 11 *Del. C.* § 4209(b), the trial court held a capital murder penalty hearing on July 3-10, 2012.[3] On July 11, the jury found the following aggravating circumstances: the defendant was previously convicted of a felony involving the use of, or threat of, force or violence upon another person; the murder was committed while engaged in the commission of a robbery; and the murder was committed while engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit Robbery in the First Degree (making Mr. McCoy eligible for the death penalty under 11 *Del. C.* § 4209). The jury found by a 10-2 vote, on both Counts 1 and 2 that the aggravating circumstances outweighed the mitigating circumstances by a preponderance of the evidence. The jury recommended the death penalty.

On October 11, the court found that "the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist" and sentenced Mr. McCoy to death on Counts 1 and 2; 20 years incarceration (with the first 5 years mandatory) on Counts 3, 4, and 5; and one year incarceration on Count 6.

[2] On June 18, 2012, after the State's case closed, Mr. McCoy moved under Super. Ct. Crim. R. 29(a) for judgment of acquittal on all charges. The court reserved decision until the close of all the evidence and, on June 26, issued an opinion denying the motion.

[3] The case's guilt and penalty phases were heard by the same jury with the exception of Alternate Juror 2, who was dismissed by the court for reviewing a newspaper story about the trial.

SUMMARY OF ARGUMENT

I. The trial court violated Mr. McCoy's right to a fair trial by seating a juror with significant potential bias over his objection. Despite no requirement to show cause, Mr. McCoy gave legitimate explanations for his peremptory challenge, including that the juror's wife was as a counselor at the facility where Mr. McCoy is housed. The court denied the challenge despite liberally accepting challenges from the State and prior defense counsel without question.

II. The trial court erroneously failed to instruct the jury on accomplice testimony as required by *Brooks v. State*, 40 A.3d 346, 346 (Del. 2012), before one of the State's accomplice-witnesses testified. The evidence demonstrated that Talon Bishop was an accomplice to the underlying robbery and murder—even by Talon Bishop's own testimony; he was an accessory after the fact.

III. The State's case, consisting solely of uncorroborated accomplice testimony, was contradictory, unbelievable, and completely irreconcilable. Mr. McCoy's conviction should be reversed under *Washington v. State*. 4 A.3d 375, 378 (Del. 2010).

IV. The State's prosecutorial misconduct violated Mr. McCoy's Due Process rights. The prosecution improperly and pervasively vouched for its witnesses, expressed opinions about the case and Mr. McCoy, demeaned Mr. McCoy and belittled his choice to represent himself, exploited his *pro se* status,

and even threatened him during the trial and penalty phases of this case. There is no case more significant in our justice system than a capital murder trial, as the defendant is on trial for his life. The prosecution's conduct here, however, tarnished the integrity of the judiciary and our adversarial system and deprived a *pro se* capital murder defendant his right to Due Process.

V. Under the recent United States Supreme Court case *Alleyne v. United States*, 133 S. Ct. 2151, 2151 (2013), Delaware's death penalty process violates the Due Process Clause and the Sixth Amendment to the United States Constitution.

STATEMENT OF FACTS

On May 4, 2010, at approximately 8:07 p.m., in the parking lot at 1632 South Governor's Avenue in Dover, James Munford ("Munford") suffered a single gunshot wound to the right side of his torso and later died.

I. THE STATE'S CASE

A. Accomplice testimony

The State contends Mr. McCoy arranged a drug deal with Munford, through Munford's girlfriend, Rekeisha Williams ("Williams"). According to the State's theory, Mr. McCoy and Deshaun White ("White"), robbed and shot Munford, using a handgun obtained from Talon Bishop ("Bishop") that he stole from his mother. The only eyewitness testimony came from these accomplices: Williams, White, and Bishop. No other evidence connected Mr. McCoy to the crime.

Before Williams testified, the trial court gave the jury an accomplice instruction.[4] Williams testified that Mr. McCoy's nickname was "Push." A00357 at 22:15. She claimed they met in work release and became acquaintances in October 2009. A00357 at 23:17-24:1. She claimed that in 2010, she met Munford[5] at a nightclub and visited him often in Maryland. A00357 at 24:2-8.

[4] The Court gave the "modified *Bland*", *Bland v. State*, 263 A.2d 286 (Del. 1970), jury instruction on accomplice testimony mandated by *Brooks v. State*, 40 A.3d 346 (Del. 2012). A00356 at 19:14- 20:10. On July 12, 2011, under a plea agreement, Williams plead guilty to Hindering Prosecution and Felony Conspiracy. A00382 at 121-123; A00383 at 126.

[5] In places in the record, Williams and others refer to Munford as either "Durham" or "Duron."

On May 3, 2010, Williams testified Munford asked her to help him sell ecstasy. A00358 at 27:18-21; A00359 at 29:1-3. She called Mr. McCoy to set up a deal in Dover. A00359 at 29:16-18; A00360 at 33:23. Williams, Munford, and Mr. McCoy agreed to meet at a McDonald's on May 4. Mr. McCoy changed the location to the bowling alley parking lot. A00368 at 66:12-19. Williams lied to police when asked if she knew that the meet was drug related. A00388 at 145.

Williams claimed, when she and Munford arrived at the bowling alley, Munford parked the car on the side on Mr. McCoy's instruction. Mr. McCoy and White approached the passenger from the rear. A00368 at 67-68. Mr. McCoy entered the vehicle and sat behind Williams. A00369 at 71-72. Then, she claimed, Mr. McCoy pulled out a gun and said "don't move" and directed White to "run his pockets," which to Williams, meant to rob Munford. A00370 at 73, 76. Per Williams, she asked Mr. McCoy if she could leave, and he agreed. A00395 at 173:21-174. She testified she lied to police when she told them Munford asked if she could leave. A00395 at 173-74.

Williams exited the vehicle and headed to the back of the lot but saw White walk around the vehicle's rear and to the driver's side which then opened. A00388 at 148, A00389 at 149. She heard two gunshots within four to five seconds after leaving the vehicle. A00371 at 77, A00389 at 149. She ran to a nearby stop sign and walked to a nearby Burger King. A00437 at 54-56.

Williams called family several times and Mr. McCoy a *dozen* times. *See* A00371 at 79, A00398 at 186:7-12, A00399 at 190-191; A00437 at 56:6-15; A00601 at 9. She lied to police when she told them she did not call Mr. McCoy. A00442 at 73-74. She only called Munford *once* which went to voicemail. A00398 at 186. Her phone records do not reflect this call. A00398 at 186.

Williams testified when she finally reached Mr. McCoy, she asked why he robbed and killed Munford but he was unresponsive. A00396 at 179:16-21. She also testified, on one call, Mr. McCoy threatened her if she told anyone. A00371 at 80. She never contacted the police. A00462 at 154-55. In fact, she saw a police car, but made no attempt to get help. A00603 at 20.

After she left Burger King, Darya found her and walked to Mr. McCoy's home. A00628 at 118. At the home, she went to the basement where she saw Mr. McCoy and White. A00619 at 82. She testified that she lied to police about not seeing White. A00441 at 70. Williams testified Mr. McCoy took her phone; however she stayed voluntarily until she went home. A00445 at 87; A00601 at 11. She lied to police about being kidnapped by Mr. McCoy. A00442 at 75-76. Williams claimed, before she left the home, Mr. McCoy threatened her. A00601 at 11. Her phone records demonstrate, after she left the home, she continued text messaging Mr. McCoy. *See e.g.,* A00607-08.

Police interviewed Williams twice. On May 7, Williams did not pick Mr. McCoy out of a six person line-up. A00377 at 102, 104. She told police the person inside the vehicle was light skinned,[6] A00383 at 128, and the one outside was about an inch taller than her.[7] A00384 at 133:15-16. She did not mention Mr. McCoy. She claims she was scared. A00384 at 133:15-16, A00386 at 137, A00395 at 175:1-15. She gave police a false phone number, A00383 at 127:21-128:2, and said she made no calls right after the murder. A00396 at 178:20-22.

At the May 11 interview, Williams claimed the story was "the entire truth," "all the way it happened," and "to the best of [her] recollection." A00381 at 118-19, A00382 at 122. She told police "what actually happened" "because it's not all about me. It's more about Durham and his family." A00380 at 116, A00381 at 17.

On cross, Williams said her May 11 statement was only part truth. A00387 at 143:18-20, 144. She stated "half of the stuff in there is not true." A00429 at 23:17. She acknowledged her false statements and admitted she: arranged the transaction and was to be paid in crack cocaine, A00388 at 145; was at the home on her own free will, A00388 at 146:16-147:10, A0000442 at 75-76; called Mr.

[6] Williams admitted that Mr. McCoy is brown skinned A00383 at 128, A00384 at 129.
[7] She testified to being 5'4". A00385 at 133:15-16.

McCoy a dozen times (and not Munford) A00442 at 73-74;[8] and she saw White at the home. A00441 at 70.

White is Mr. McCoy's nephew. The trial court gave an accomplice instruction before he testified. A00610 at 46-47. By the time of trial, White had pled guilty as an accomplice to manslaughter, possessing a firearm during a felony, tampering with physical evidence, and second degree conspiracy. A00610 at 48; A00612 at 53-54. His plea agreement would reduce his sentence to 10 years if he testified against Mr. McCoy. A00612 at 54-55.

White testified that, in the summer of 2010, he was living with Elizabeth White (his grandmother), Darya White (his aunt), Tracey (Darya's friend), and Mr. McCoy. A00611 at 49-50. At approximately 7 or 8 p.m. on May 4, White and Mr. McCoy were walking to the bowling alley. A00613 at 59-61. White testified that Mr. McCoy was wearing a black and red hat, but had told police it was a blue and white "New York hat." A00635 at 145. He further testified that Mr. McCoy was taking calls on his phone while walking. A00635 at 145.

According to White, once at the bowling alley, they approached a white Suburban parked on the side of the bowling alley. A00635 at 62. The windows were down, and he could see two African Americans (a male and a female). A00635 at 62. White claimed that Mr. McCoy got inside the vehicle in the

[8] Although her phone records demonstrate no outgoing calls to Munford, she claimed she made one call.

passenger side seat behind the female, but had White wait outside the vehicle. A00635 at 63-64. White stated Mr. McCoy talked to the driver for about a minute or two but could not hear inside the vehicle. A00635 at 64. Despite his inability to hear the conversation, he claimed he saw Mr. McCoy pull a dark gray gun from his waist band and tell the driver to "give him what he had, basically." A00614-15 at 64-65. White further testified that Munford asked Mr. McCoy if Williams could leave, despite Williams testimony that she asked, and that she lied when she told police that Munford asked if she could leave. A00615 at 65.

White also claimed, after Williams ran off, Mr. McCoy told White to go to the driver's side "[t]o make sure the driver didn't get out and run." A00615 at 65. However, on cross, White stated that as he stood at the driver's side door, or sometime before, he saw Munford give Mr. McCoy the drugs.[9] A00615 at 65-66; A00627 at 115. Then, "in a split second [as] the guy tried to get out of the car, [White] heard a gunshot." A00615 at 67. Munford then "made a loud noise and fell out of the car and stumbled and got back up and began to run." A00615 at 67. White claimed more gunshots came from inside the vehicle as Munford ran away. A00615 at 67. White claimed, Mr. McCoy was "leaning over in between the

[9] White testified to *both* scenarios. On cross examination, he admitted to a third version, that in his second police statement, which he characterized as the truth, he told police that Munford handed everything over *before* he went around the vehicle. A00627 at 115.

middle of the two seats" and was shooting out of the driver's side. A00616 at 69. He claimed he "felt a spark from the gun as it shot." A00615 at 67.

Mr. White testified he was "confused and in disbelief" but was "brought back to reality" when Mr. McCoy told him to drive the car. A00616 at 70. He drove the vehicle, with Mr. McCoy in the back, and parked near 302 Samuel Painter Drive in Dover. A00616 at 71-72. There, he claimed, on Mr. McCoy's instruction, he used his shirt to wipe the areas they touched, including door handles and the steering wheel. A00616-17 at 72-73.[10] He claimed that they ran home. A00616-17 at 72-73. They later burned their clothes. A00619 at 82-83.

As White continued, he testified sometime after they returned home, his aunt, Darya arrived with Williams, and they all went downstairs, even though he had told police that Williams arrived at the home *before* Darya. A00617 at 75-76; A00628 at 119. He claimed he observed Mr. McCoy with two bags of pills from a gray lunch box. A00618 at 77. He claimed Williams stayed at the home even though Mr. McCoy "wasn't really there." A00619 at 82-84.

Next, Talan Bishop testified. The trial court did not give the accomplice instruction before Bishop's testimony, notwithstanding Bishop's confessed promotion of the crimes through stealing his mother's gun and making false

[10] Police discovered and searched the abandoned vehicle and found identification belonging to Williams.

statements to investigators. Bishop testified, on May 2, he stole a Taurus .38 caliber revolver, and approximately three bullets, from his mother, Loretta Williams.[11] A00946 at 58-59; A00947 at 61. He testified he took the gun "for protection" and "to make sure nothing happened" to his friend Abdul Bumbrey at a basketball game, and he gave the gun to Mr. McCoy "to hold" because Bumbrey's girlfriend did not want the gun in her car. A00946-47 at 60-63. Bishop testified he walked to Mr. McCoy's home and gave him the gun. A00947-48 at 64-65.

Bishop claimed he attempted getting the gun back from Mr. McCoy, but when Mr. McCoy did not return it, he told his mother what happened. A00948 at 66. He claimed Mr. McCoy threw the gun "in the bushes," but could not find it. A00948 at 67. Bishop, however, told police he left the gun with an "Izaiah", not Mr. McCoy, in the Autumn Run Apartments. A00956-57 at 100-01.

B. Scene Witnesses

Mary Skocik was walking home near the front of the bowling alley when she heard "four loud cracks" that she thought were firecrackers. A00897 at 25-26. Then, "an African-American male ran by [her] on the sidewalk, said call 911 and, basically, collapsed in front of [her]." A00897 at 27. She went into the bowling alley and asked someone to call. A00897 at 27. At some point, she spoke to an

[11] No relation to Rekeisha Williams.

operator. A00899 at 33. When she and other individuals were back outside, the male was turned over and it was clear he had been shot. A00897-98 at 28-32.

At around 7 p.m., Gilbert West was also at the bowling alley. A00921 at 121. He left between 9:15 and 9:30 p.m. to pick up his mother, but returned after finding a bullet hole in the vehicle. A00921-22. West's mother wanted to report the damage. A00921-22. After they returned, West found a "silver, balled up" object, which was admitted as evidence. A00924 at 133-36.

Around 8 p.m., Abraham Patz, who lives across the street from the bowling alley, heard gunshots. A00925 at 140. He looked outside his window and "saw a man stumbling through the parking lot, and a large white SUV taking off at a high speed." A00925 at 140. The man stumbled from the side of the SUV. A00926 at 142. Mr. Patz went to the bowling alley parking lot and saw "a young man who had been shot a couple of times" lying on his back. A00926 at 141.

C. Expert Witnesses and Other Evidence

On May 5, Dr. Edward McDonough, an assistant medical examiner, performed Munford's autopsy. A00902 at 47. He found "an entry gunshot wound of the right front slightly to the side of the chest." A00906 at 63. This was "a wound of the right anterior chest with no visible gunshot residue on the skin surrounding the wound." A00909 at 75. The bullet's trajectory was downward. A00908 at 69. A bullet was found in the muscle "in the lining of the spine and just

above the pelvic wall in the back behind the kidneys." A00908 at 71. The official cause of death was homicide—a gunshot wound to the chest. A00910 at 77.

Detective Roger Cresto, of the Delaware State Police Evidence Detection Unit, was assigned to the shooting on May 4. *See* A01040-41. Detective Cresto was responsible for locating, collecting and processing all evidence. A01042 at 173. In processing Munford's vehicle, Detective Cresto collected William's Driver's License, three cell phones (making the total four), a T-mobile cell phone box, forty twenty-two caliber bullets, sixteen DNA swabs, twenty Penicillin pills, cigarettes, and two bottles of an amber liquid. A01044 at 178-83. He also "processed the vehicle for fingerprints." A01058 at 23.

On May 12, Detective Cresto collected evidence from Mr. McCoy's residence at 341 David Hall Road. A01060 at 29. He collected and fingerprinted the following: (1) a black and red hat with the letter C; (2) various bottles; (3) pants; (4) a box of thirty-three nine millimeter bullets; (5) one freestanding nine millimeter bullet; (6) a black pistol holder; (7) Ziploc bags; (8) a blue and white pipe; and (9) documents. A01060-63 at 30-41; A01067 at 58-59. He also collected partially burnt cloth and buttons from the backyard. A01065 at 52.

Detective Cresto did not do a crime scene reconstruction, trajectory analysis, or test for gunshot residue. A01067 at 60. He found no blood. A01067 at 60. No weapon was located. A01077 at 97. All fingerprints were sent to Delaware's State

Bureau of Identification for analysis. A01058 at 24. He also sent the two bullets—one from the scene and one from Munford—to Delaware's forensic firearms services unit. A01058 at 24. Detective Cresto also received forty rounds of .38 caliber bullets from Loretta Williams. A01059 at 25.

The DNA swabs were analyzed by the Medical Examiner's Office. A01099 at 185. The DNA taken from Munford's vehicle was compared with the DNA of Mr. McCoy, White, and Munford, A01057 at 20, but not Williams. A01070 at 71. The DNA analysis found no matches. A01058 at 22.

Carl Rone, a Delaware State Police forensic firearms examiner, analyzed the bullets recovered by Detective Cresto. A01083 at 123; A01084 at 127. He was able to determine that the two bullets came from the same firearm. A01085 at 131. He determined that the bullets were either .38 or .357 caliber. A01086 at 133. He could only narrow the potential weapons to manufacturers FIE, Taurus, Iver Johnson, Charter Arms, or Rossi. A01093 at 163. He explained without the actual firearm, he could not determine if the bullets were fired from it or not. A01095-96 at 169-73; A01100 at 189. Nor could he determine if the bullets provided by Loretta Williams matched the two fired bullets. A01098 at 184.

Rodney B. Hegman, a Delaware Bureau of Identification forensic latent print examiner, was responsible for analyzing all fingerprints pulled during the

investigation. A01054 at 7; A01055 at 10. Despite having several fingerprints, not a single one matched with Mr. McCoy or White. A01055 at 11.

Munford's shooting was captured on the Bowling Alley's motion sensitive video surveillance system. The video showed Munford's vehicle pulling into the side parking lot. Two people approached the passenger side of the vehicle. One individual walked around the vehicle's rear and approached the driver's side door. Approximately thirty-one seconds later, the driver's side door opened and Munford exited the vehicle. A struggle took place outside the vehicle and, after falling, Munford ran towards the front of the bowling alley. The person who approached the driver's side appeared to reach down to pick something up, then get into the vehicle and drive out the back of the bowling alley.

During the shooting, the video showed two females walking across the parking lot near the vehicle. The video did not show where the other individual went. The video did not show anyone other than Munford leaving the vehicle. The video was not clear enough to see details of any individual faces.

D. Miscellanies

The State put on several witnesses for irrelevant and speculative testimony. Da'Janiel Smith, Mr. McCoy's friend, identified his and Mr. McCoy's mobile numbers. A00855 at 189. He testified on May 4, he was with Mr. McCoy at

Rodney Village. A00854 at 185.[12] A woman called his phone twice looking for Mr. McCoy, and he gave the phone to Mr. McCoy who "stepped off" to answer. A00856 at 193. The caller was identified as Williams. A00856 at 193. The next day, he claimed, Mr. McCoy came over with a sandwich bag of ecstasy and stayed for several days. A00856 at 196; A00858 at 204; A00859 at 207-08.

Agealena Sauls, who dated Mr. McCoy about a month before his arrest, testified that on May 9, she drove him to a friend's place so that he could give this person ecstasy. She claimed the pills were in a plastic bag. A00894 at 15.

Loretta Williams, Bishop's mother, testified her son stole her .38 caliber Taurus revolver and ammunition.[13] A00934-35. She said he stole it for protection and gave it to someone. A00934-35; A00938 at 27-28. She also claimed she spoke with an "Isaiah" who told her "the cops were coming so he had to throw it in the bushes." A00934-35; A00938 at 27-28. She notified police. A00934 at 12.

Elizabeth White ("Elizabeth") testified Mr. McCoy, White, Darya, and Tracey lived with her in May 2010. A00968-69. Mr. McCoy stayed in the basement. A00968-69. She testified Mr. McCoy and Deshaun did not "get along," and Mr. McCoy objected to White living there. A00979 at 191-92. She recalled police activity in the neighborhood on May 4, but said White and Mr. McCoy were

[12] Also referred to as the "Autumn Run Apartments."
[13] Loretta recalled that ten bullets were taken.

home and Mr. McCoy's behavior was normal. A00969 at 150; A00980 at 194. Further, she testified she periodically burns items in her yard. A00970 at 154.

Elizabeth testified that the day after the incident, there was a young woman (Williams) alone in the basement; Mr. McCoy was not home. A00970 at 156; A00979 at 192; A00980 at 195. She said there was a "large amount of time when [Mr. McCoy] wasn't there but [Williams] was." A00980 at 194. She testified, at some point during Williams's stay, Williams asked for cigarettes and watched television with the family. A00971 at 157. She said based on the "lay of the house," Williams could have walked out if she wanted. A00980 at 196. She also testified Mr. McCoy eventually asked her to take Williams home. A00971 at 158.

Darya White testified that she lived in Elizabeth's home in May 2010. A00987 at 199. Everyone had their own area, and Mr. McCoy stayed in the basement. A00987 at 199. She recalled, on May 4, she met with Williams, who was supposed to give her marijuana. A00983 at 208. She testified everything was "pretty copacetic" when Williams was there. A00983-84 at 208-09.

II. THE DEFENSE'S CASE

Mr. McCoy testified that he regularly bought ecstasy from Williams. A01192 at 132-33. He testified, on May 3, he spoke with Williams, who had re-stocked on her ecstasy and to see if he was interested. They set up a meeting. He testified Williams spoke to White on Mr. McCoy's phone. A01192 at 133:4-7.

On May 4, around 7:15 or 7:30 p.m., Mr. McCoy and Williams completed their drug deal at Mr. McCoy's home, and Williams told him that she was returning later to meet White. A01193 at 135:5-20. Later, White used Mr. McCoy's cell phone and asked if he could take it with him, but Mr. McCoy refused. A01193 at 137: 2-23. White then left the residence with someone named "Pistol."

Sometime later, Mr. McCoy spoke with Williams, who said White was supposed to pick her up at Burger King. A01194 at 138: 2-22. While she waited, she told Mr. McCoy that there were police in the area. A01194 at 138. When White returned, he used Mr. McCoy's cell phone to call Williams. A01194 at 139.

Williams asked if either of them could give her a ride to their house. A01194 at 139:1-23. Mr. McCoy told her that Darya would pick her up, but she would expect something in exchange. Darya came home and agreed to pick up Williams. A01194 at 140. Darya and Williams arrived at the home around 9 p.m. and went to the basement. About 30 to 40 minutes later, Mr. McCoy left. A01194 at 140:1-23. He returned later that night with a friend. A01194 at 141:10-11. Overall, Mr. McCoy was hardly present when Williams was at the home, but when he was around, Williams was all throughout the residence.

On the morning of May 5, while eating breakfast, Mr. McCoy heard on the radio that a man was shot at the bowling alley. When he told White, White looked

down and appeared upset. A01195 at 142:5-20. Mr. McCoy also saw White with a black handgun sometime after the incident. A01202 at 170.

Between May 5 and 6, Williams's presence caused strife among Mr. McCoy's friends. A01199 at 159:10-19. He decided she should leave; however, White insisted that he pay transportation. A01199 at 160:1-4. Mr. McCoy asked his mother to take her. A01199 at 160:5-10. After Williams left, Mr. McCoy received 15 messages from Williams. A01199 at 161:12-19.

Yves Hall ("Hall"), testified, on May 4, he was driving by the bowling alley. A01280-81. He heard a gunshot and saw two men fighting in front of a white SUV. A01285 at 128. Hall heard three or four more gunshots. A01285 at 128. He saw one black male running, while the other jumped in the SUV and traveled southbound on Nathaniel Mitchell Road. A01285 at 128. Hall confirmed the black male he witnessed running was Munford. A01285 at 130.

Johnnie Shockley ("Shockley") was Munford's friend. A01315 at 14. On May 4, around 2 p.m., Munford stopped by Shockley's home. A01315 at 15. Munford told Shockley he and Williams were headed to a bowling alley in Dover to sell ecstasy. A01315 at 16. Shockley knew Munford carried a chrome twenty-two caliber handgun during drug deals. A01317 at 21-22.

On the evening of May 4, Ella Hickman ("Hickman") was walking with her God-sister from her aunt's place in Rodney Village to Citi Trends. A01412 at 128.

She heard "shots in between going around the corner to get to the stores and in between the bowling alley." A01413 at 129. While walking through the parking lot, she observed a "couple of guys." A01413 at 129. She was approximately 12 to 15 feet away. A01415 at 140. There were two people inside a vehicle next to these guys—"[i]t was one driver and one on the passenger's seat." A01413 at 132. She thought about approaching, but did not because they were "acting weird." A01413 at 129. Police showed her a photo array containing a picture of Mr. McCoy. Neither of the men she saw was the Defendant. A01414 at 133. In court, Hickman testified that she was "positive" that Mr. McCoy was *not* one of the "guy s that were at the vehicle." A01414 at 133; A01416 at 141.

ARGUMENT

I. THE TRIAL COURT VIOLATED DEFENDANT'S RIGHT TO A FAIR TRIAL BY SEATING A JUROR WITH SIGNIFICANT POTENTIAL BIAS OVER DEFENDANT'S OBJECTION

Question Presented

Whether the trial judge violated (1) Mr. McCoy's right to a fair trial under the Sixth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution and (2) Mr. McCoy's right to equal protection under the Fourteenth Amendment to the United States Constitution, by arbitrarily denying Mr. McCoy's challenge to one of the jurors, resulting in the seating of a juror whose wife was as a counselor at the very facility where Mr. McCoy was, and still is, housed as an inmate. *See* A02151 at 177-79.

Scope of Review

The Court reviews constitutional questions under a *de novo* standard. *Zebrowski v. State*, 12 A.3d 1115, 1119 (Del. 2010).

Merits of Argument

This Court recognizes a defendant's "fundamental right to trial by an impartial jury," secured by the Sixth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution. *Knox v. State*, 29 A.3d 217, 223-24 (Del. 2011). That right is violated "if only one juror is improperly

influenced." *Schwan v. State*, 65 A.3d 582, 587 (Del. 2013) (quoting *Hall v. State*, 12 A.3d 1123, 1127 (Del. 2010)). This Court has explained that:

> Juror impartiality must be maintained not only in the interest of fairness to the accused, but also to assure the overall integrity of the judicial process. Furthermore, "jury bias, either actual or apparent, undermines society's confidence in its judicial system."

Id. at 588 (quoting in part *Knox*, 29 A.3d at 223).

Additionally, the peremptory challenge—a common law tool, preserved and vested in the accused by Rule 24(b) of the Superior Court Rules of Criminal Procedure— safeguards the fundamental right to a fair trial by an unbiased jury.[14] Indeed, this Court reiterated a defendants' right to peremptory strikes, observing:

> One of the primary safeguards for impaneling a fair and impartial jury is a defendant's right to challenge prospective jurors, either peremptorily or for cause." Thus, a defendant has two pretrial methods of removing a prospective juror from the jury panel: a peremptory challenge or a challenge for cause.

Id. (quoting in part *Banther v. State*, 823 A.3d 467, 481-82 (2003)). Peremptory challenges "have been viewed as one means of assuring the selection of a qualified and unbiased jury." *Batson v. Kentucky*, 476 U.S. 79, 91 (1985). Thus, there is a "long and widely held belief that peremptory challenge is a necessary part of trial by jury." *Id.* at 91, n. 15 (quoting *Swain v. Alabama*, 380 U.S. 202, 219 (1965)).

This Court has overturned convictions, where the *voir dire* process stymied the use of peremptory strikes. For instance, in *Schwan v. State*, the Court reversed

[14] "Peremptory is defined as [n]ot requiring any shown cause." *Schwan*, 65 A.3d at 588, n. 20.

the defendant's conviction, in part, because information concerning a seated juror's connection to the Attorney General's Office—the juror was a child care center director where the trial prosecutor's colleague took her children—did not come to light until after jeopardy attached and, the defendant had been deprived of his "historically important peremptory challenge right to remove [the] juror without showing cause." 65 A.3d at 586, 588. In *Knox v. State*, this Court reversed a conviction where it was not known until after trial that a juror was a victim in a pending case involving the same prosecutor. 29 A.3d at 224. The Court stated:

> Because the trial judge failed to ask the venire members whether they were victims of a crime, Knox did not have a chance to probe Juror No. 8's potential bias during voir dire. Even if the trial judge had questioned Juror No. 8 and determined that Juror No. 8 could serve, any rational defense counsel would be alerted to exercise a peremptory challenge to strike Juror No. 8.

Id.

Here, the trial judge violated Mr. McCoy's right to a fair trial by an unbiased jury by: i) not striking for cause a juror whose wife had spent her entire career as a counselor at the very facility where Mr. McCoy was, and still is, housed as an inmate; and ii) arbitrarily denying Mr. McCoy's peremptory challenge to that juror. A02147 at 162-64; A02151-52 at 177-81.

The State did not object to Mr. McCoy's use of a peremptory challenge on this particular juror. Rather, the court, *sua sponte*, demanded that Mr. McCoy articulate to the court's satisfaction his basis. A02151 at 177-78. The trial court's

demand is completely at odds with the very essence of a peremptory challenge, which is to permit a party or counsel to remove a juror "for any reason at all, as long as the reason is related to his view concerning the outcome of the case." *Batson*, 476 U.S. at 89 (quoting *U.S. v. Robinson*, 421 F. Supp. 467, 473 (D. Conn. 1976)). Thus, the trial court erred by demanding an explanation from Mr. McCoy.

The trial court compounded its error by rejecting Mr. McCoy's basis for wishing to exercise a peremptory strike. When pressed by the court, Mr. McCoy, gave a cogent— albeit unnecessary—explanation for the strike that included the juror's demeanor and the juror's potential bias:

> …his wife is a counselor at DCC.
> I'm familiar with how inmates treat these counselors at times, some of the issues that went down. As he said, about five years ago, that's around the time when the lady was raped, the counselor lady, was raped in Smyrna. So I'm pretty sure he probably heard about that. His wife probably heard about that. So the counselors get an outlook that they have and their spouses, it may trickle onto their spouses things that they may have heard and for that it doesn't sit right.
> As long as I have peremptory strikes, I won't let a person like that, just the possibility that a person like that, would possibly have bias based on something their spouse may have told them pertaining to inmates.
> I know on a day-to-day basis being back at the prison how people treat these counselors and very disrespectful way, throwing things on them like feces and things of that nature. So I don't know if he's ever told her -- if she's ever told him anything about that but that just gives me a lot of pause in allowing the juror to sit on a trial while I have peremptory strikes to use, Your Honor.

A02151 at 178-79.

Moreover, the trial court's improper demand for an explanation from Mr. McCoy, and its refusal to accept that explanation, should not be viewed in a vacuum. The *voir dire* process was conducted in a manner that was unfair to Mr. McCoy, and denied him his fundamental right to a fair trial by an unbiased jury. Mr. McCoy's peremptory challenge to this juror was consistent with his prior counsel's pattern of challenging jurors with potentially biased connections. In fact, when Mr. McCoy was represented by counsel, the court struck *for cause* four jurors because they worked at the facility where Mr. McCoy resides. *See* A00053-54 at 124-26 (juror struck for cause because brother-in-law is a correctional officer); A00056 at 133-36 (juror struck for cause because son-in-law is a correctional officer); A00067 at 179-80 (juror struck for cause because husband is a correctional officer); and A00182-83 at 59-63 (juror struck for cause because husband works there and Mr. McCoy believed he knew the juror's husband).

In addition, Mr. McCoy's prior counsel used a peremptory challenge to strike a juror who had no connection to the Smyrna facility but had relatives that were working as correctional officers in New York. *See id.* at 198-200, 213-17. Unlike the *pro se* Mr. McCoy, counsel never received any demands for explanation from the State or the court. Even the State acknowledged: "Certainly, they can exercise a peremptory if they believe there is sufficient reason." *Id.* at 214.

The court's denial of Mr. McCoy's legitimate and properly exercised peremptory challenge to a juror whose wife was a retired counselor from the facility—after having struck for cause other jurors that had connections to employees at the facility, and allowing Mr. McCoy's counsel to exercise a peremptory challenge to a juror because the juror was related to correctional officers in New York—was arbitrary and fundamentally unfair to the *pro se* Mr. McCoy. The particular juror should have been struck for cause. The court's erroneous refusal to permit even the exercise of a peremptory strike under the circumstances can only be attributed to Mr. McCoy's *pro se* status.

Additionally, the court never demanded explanations from the State when exercising peremptory strikes. In fact, the State even argued—when it suited the State—that it "stra[ins] credulity" that a juror whose uncle was a retired prison guard would have no biases. *See* A00270 at 53; A00275 at 72. Thus, it is especially concerning that the trial court dismissed Mr. McCoy's similar claim about the potential biases of a retired prison counselor's spouse. In another instance, the State exercised a peremptory challenge on a juror simply because the juror, though death qualified, did not share the State's enthusiasm for capital punishment. The State was concerned the juror would not apply the death penalty "in a run of the mill capital case," but rather would reserve the death sentence for

"extraordinary" cases. *See* A00164 at 194-96.[15] The court had no problem with this.

The trial court erred by not striking for cause, then demanding Mr. McCoy explain his basis for exercising a peremptory challenge to a juror whose wife was a counselor in the facility in which Mr. McCoy is held, and then by rejecting Mr. McCoy's explanation. During the trial, the State blatantly took advantage of the juror's background—and the bias Mr. McCoy hoped to avoid—when cross-examining defense witness Thomas Gordon, an inmate at the Smyrna facility and where the juror's wife worked just five years before. The State asked Gordon: "Okay. How is it, then, you've been convicted of assault in a detention facility, haven't you?" A01419 at 153. Mr. McCoy objected to this improper question, and the question was withdrawn. But the damage was done. A01419 at 153-56.

The trial court's errors violated Mr. McCoy's fundamental right to a fair trial by an unbiased jury, requiring that Mr. McCoy's convictions be reversed.

[15] That the State considers *any* case in which a defendant is on trial for his life "run of the mill" both underscores the prosecution's cavalier attitude that permeated this case, and constitutes a concession that the State's decision to charge this as a capital case was highly questionable.

II. THE TRIAL COURT ERRED BY FAILING TO GIVE THE MODIFIED *BLAND* INSTRUCTION TO THE JURY REGARDING TALAN BISHOP'S ACCOMPLICE TESTIMONY.

Question Presented

Whether the trial court violated Mr. McCoy's (1) right to due process of law under the Fifth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution, (2) right to a fair trial under the Sixth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution, (3) right against cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section Eleven of the Delaware Constitution, and (4) right to equal protection under the Fourteenth Amendment to the United States Constitution, by not instructing the jury on accomplice testimony prior to Bishop's testimony. A00943 at 55.

Scope of Review

A trial judge's failure to provide an accomplice liability instruction is reviewed for plain error. *Brooks v. State*, 40 A.3d 346, 350 (Del. 2012).

Merits of Argument

Accomplice testimony "has inherent weakness, being testimony of a confessed criminal and fraught with dangers of motives." *Bland v. State*, 263 A.2d 286, 289 (Del. 1970). "A general credibility instruction is not an acceptable substitute for a specific accomplice credibility instruction." *Smith v. State*, 991

A.2d 1169, 1179 (Del. 2010). "[A] trial judge who fails to give an instruction about accomplice testimony commits plain error." *Brooks*, 40 A.3d at 350. "Trial judges must give a modified version of the instruction from *Bland v. State* whenever the State offers accomplice testimony." *Id.*

"A witness qualifies as an accomplice if he or she fits the definition of one, *whether charged as an accomplice or not*." *Id.* (emphasis added). "An accomplice 'is guilty of an offense committed by another person when intending to promote or facilitate the commission of the offense the accomplice aids or attempts to aid the other person in committing it.'" *Erskine v. State*, 4 A.3d 391, 394 (Del. 2010) (citing 11 *Del. C.* § 271(b)). An accomplice "need not have specifically intended the crime, so long as 'the result was a foreseeable consequence'" of the wrongful conduct. *Claudio v. State*, 585 A.2d 1278, 1282 (Del. 1991) (*citing Hooks v. State*, 416 A.2d 189, 197 (Del. 1980)).

The record established Bishop's accomplice liability. According to the State's case, Bishop stole the alleged murder weapon[16] and gave it to Mr. McCoy within a day before a planned robbery. Bishop identified himself as an accomplice. He testified that on May 2 or 3, shortly before Munford's murder, he stole his mother's revolver along with ammunition. A00946 at 58-60; A00962 at 121-22;

[16] Although there was no *proof* this was the murder weapon, if this is the State's theory, then Bishop would *have* to be an accomplice.

A00963 at 127-28. He gave the gun and ammunition to Mr. McCoy who, the State alleges, planned to use it in a robbery. A00947 at 63-64.

The evidence generates a reasonable inference that Bishop promoted or facilitated the crimes with which Mr. McCoy was charged. Bishop was evasive with police and gave three different versions of what he did with the gun: 1) he left the gun in the basement of Autumn Run Apartments, A00956-57 at 100-01; 2) then he gave the gun to a 16-year-old named "Izaiah" (*not* Mr. McCoy), A00957 at 101; and, 3) he gave the gun to Mr. McCoy "to hold." A00947 at 63-64. He admitted that he lied to police to give Mr. McCoy more time to evade authorities. A00962 at 121-23. This is enough to infer Bishop knew Mr. McCoy's alleged plan. *See Chisum v. State*, 612 A.2d 157 (Del. 1992) ("During the transaction, the appellants looked up and down the road, arguably keeping watch for police. On these facts, viewed in the light most favorable to the State, a rational jury could infer that appellants were not mere bystanders but were aiding"). This is classic evidence of his state of mind and establishes a *prima facie* case of accomplice liability for Munford's robbery and murder. Therefore, the trial court should have given the jury the "modified *Bland* instruction."

III. THE EVIDENCE, CONSISTING ONLY OF UNCORROBORATED TESTIMONY OF ACCOMPLICES AND NO PHYSICAL EVIDENCE, WAS INSUFFICIENT TO SUSTAIN DEFENDANT'S CONVICTIONS.

Question Presented

Whether the trial court violated Mr. McCoy's (1) right to due process under the Fifth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution, (2) right to a fair trial under the Sixth Amendment to the United States Constitution and Article I, Section Seven of the Delaware Constitution, (3) right against cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section Eleven of the Delaware Constitution, and (4) right to equal protection under the Fourteenth Amendment to the Untied States Constitution, by denying Mr. McCoy's motion for judgment of acquittal, when the State's case relied solely on uncorroborated and irreconcilable accomplice testimony. (June 18, 2012 Trans.: 97).

Scope of Review

The Court reviews *de novo* the Superior Court's denial of a motion for judgment of acquittal. *Priest v. State*, 879 A.2d 575, 577 (Del. 2005).

Merits of Argument

Where "it appears that the witness has hopes of reward from the prosecution, his testimony should not be accepted unless it carries with it absolute conviction of its truth." *Bland v. State*, 263 A.2d 286, 289 (1970) (quoting *People v. Grove*, 120

N.E. 277 (Ill. 1918)). In *Washington v. State*, this Court explained that a motion for judgment of acquittal must be granted if: (1) "the conflict exists in the State's evidence;" (2) "the only evidence of defendant's guilt" is "uncorroborated testimony" of accomplices; and (3) the inconsistencies are "material to a finding of guilt." *Washington v. State*, 4 A.3d 375, 378 (Del. 2010). "Corroboration" is:

> *not sufficient if it merely shows the commission of the offense or the circumstances thereof*, and does not connect the defendant therewith. It is likewise the usual rule in such states that *testimony of one accomplice is not sufficient corroboration of the testimony of another accomplice; corroboration from an independent source is not dispensed with, regardless of the number of accomplices.*

Bland v. State, 263 A.2d 286, 288 (Del. 1970) (emphasis added) (internal citations omitted). Courts requiring corroboration have described two walls—"substantive" and "substantial"— to define its character:

> Corroboration must be evidence of a substantive nature since it must be directed toward proving the connection of the accused with the crime and not directed toward corroborating the accomplice's testimony. In addition to being substantive, the corroborating evidence must be substantial. Substantial evidence is stronger evidence than that which merely raises a suspicion of guilt. It is evidence which tends to connect the accused with the commission of the offense charged.

McGehee v. State, 348 Ark. 395, 409-410 (2002) (quoting *Henderson v. State*, 279 Ark. 435, 440-441 (1983)). Here, there is neither substantive nor substantial corroborating evidence supporting the testimonies of Williams, White, and Bishop.

In *Washington*, the inconsistency between the State's two relevant witnesses regarding the defendant's presence was enough to require reversal. *Washington*, 4 A.3d at 376. While an accomplice testified that *three* assailants, including the defendant, stood within three feet of the robbery victim, the victim herself said there were *two* assailants and "flatly denied" defendant was present. *Id.* This case satisfies—indeed, exceeds—the *Washington* Court's criteria for an acquittal.

Here, the State's accomplice evidence was irreconcilable with its physical and forensic evidence in several material ways. The State's star witness, White, "observed" the victim shot in the *back* despite the medical examiner's testimony that the victim was shot in the *chest*. White testified that Mr. McCoy was sitting in the rear right passenger seat of the vehicle with a firearm pointed at Munford between the two front seats. White explained as Munford was getting out of the vehicle, Mr. McCoy shot him in the back. He claimed as he stood outside the driver's side door, *Munford was facing him when he was shot in the back.* A00832 at 99. However, Dr. McDonough testified that Munford was shot once in the chest. A00823 at 63; A00824 at 67. Dr. McDonough confirmed there was no possible way Munford could have been shot in the way White described.[17]

[17] During the defense case, White was called as a witness and asked whether it was still his testimony that Munford was shot in the back. He responded, "I don't know." When asked several more times about where Munford was shot he eventually changed his earlier testimony and said that Munford was shot in the chest. In explanation, Deshaun said he made a dramatic mistake.

The State's accomplice testimony contradicted the physical evidence in other material ways. First, White testified that he walked to the scene of the crime with Mr. McCoy, and Mr. McCoy sent a text message from a phone between 7:40 p.m. and 8 p.m. on May 4. A00823-24 at 63-65. However, Mr. McCoy's phone records show no text messages were sent from his phone from 6:50 p.m. on May 4 to 11:27 p.m. on May 5. (State's Exhibit 2). Second, Williams testified that she was at the scene of the crime inside Munford's vehicle when she got out and ran towards the back of the bowling alley. The surveillance video does not show Williams, and only Munford, running from the vehicle before it was driven away. Third, Williams testified that they were at the bowling alley for fifteen minutes before the two individuals approached the vehicle. The surveillance video, shows the vehicle was parked for three minutes and seventeen seconds before two individuals approached. Fourth, Williams testified that she called Munford once after the incident. Her phone records proved this false—there was no such call. Fifth, she testified after she left the home she never contacted Mr. McCoy, despite her phone records showing otherwise—she traded text messages with Mr. McCoy.

If the State had objective evidence such as independent eyewitness testimony, positive fingerprints, positive DNA, or surveillance video identification, such evidence might corroborate the accomplice testimony. But no such evidence exists. Other than uncorroborated, irreconcilable accomplice testimony, there is no

evidence connecting Mr. McCoy to the crime scene, no evidence that he shot Munford, and no evidence that he conspired with anyone to commit this crime.

Beyond the fundamental conflicts between the State's witnesses and the physical evidence, there were numerous material, irreconcilable inconsistencies between accomplices. Williams testified that her May 11 police statement is "to the best of [her] recollection" "what actually happened," "the entire truth," and "all the way it happened" "[b]ecause it's not all about me…[i]t's more about Durham and his family having closure" and thought it was "the right thing to do." A00380-81 at 116-119; A00382122. She also testified this very same statement was only part of the truth, i.e. "[n]ot completely [true] but somewhat," A00387 at 143-44, and claimed "half of the stuff in the [statement] is not true." A00357 at 23:17.

White's testimony about his July 26 police statement is similarly irreconcilable. He testified he told the truth during his interview, A00622 at 95-96, and his plea agreement was conditioned on the truth of this statement and him testifying consistently with it. But, during cross, he testified this statement was "not the whole truth." A00628 at 119. He admitted he was "willing to throw [his friends] under the bus to hide [his] involvement." A00629 at 123.

The accomplices also disagreed with themselves and with each other about basic facts. Williams and White disagreed on what Mr. McCoy was wearing—she said a black hoodie, while he said a black shirt; he also said a red hat, but at one

point said a blue hat. A00369 at 69; A00603 at 19. Further, Williams said the person who walked around the vehicle was only an inch taller than her (she is at 5'4"). A00385 at 133. However, White identified himself as the assailant walking around the vehicle and is 5'10" or 5'11". A00613 at 57. Moreover, Hickman—an independent witness, not an accomplice—testified Mr. McCoy was not one of the men she observed at the crime scene at the time of the shots.

The conflicts in testimony continued with descriptions of the incident. White and Williams agreed, then disagreed, about who asked that Williams be allowed to leave the vehicle. At trial, White said it was *Munford*.[18] Williams testified at trial that *she asked*. A00395 at 173. Also, White testified, during the incident, Munford was robbed *before* he walked around to the driver's side of the vehicle but later claimed the actual robbery occurred *once he was at the driver's side door*.

These wild inconsistencies continued regarding events *after* the incident. Williams testified that Darya found her and took her to the house, where she stayed of her own free will, despite telling police that she was kidnapped. White testified that Williams arrived before Darya—that they did not arrive together.[19]

[18] This is consistent with Williams' May 7, 2010 statement to police and evidences some collusion between Deshaun and Rekeisha. Otherwise, it's difficult to conceive understand how he comes up with this "fact."

[19] He also mentioned nothing about a kidnapping or false imprisonment.

These conflicts in the State's case, individually and taken as a whole, make the State's case unbelievable and impugn the integrity of the criminal process. No one should be executed on a conviction with so many inconsistencies.

Although *Washington* does not mandate acquittal because defense evidence contradicts the State's evidence, here the defense presented the testimony of an independent eyewitness—not an accomplice. Thus, the State's case directly contradicts itself and *the testimony of an independent witness* about whether Mr. McCoy was even present at the crime scene. Just like the victim in *Washington*, Hickman "flatly denied" Mr. McCoy was one of the assailants she observed. And, the *physical evidence* in this case backs up the testimony: *Mr. McCoy's fingerprints were excluded from being present in the vehicle, and there was no match for his DNA.* This Court should reverse Mr. McCoy's convictions.

A. The "heightened reliability" requirement for death penalty cases

A death penalty case is "different in both its severity and its finality." *Gardner v. Florida*, 430 U.S. 349, 358 (1977). Accordingly, "there is a corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case." *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). The "qualitative difference between death and other penalties calls for a greater degree of reliability." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). Heightened protection is based on the "fundamental respect for

humanity underlying the Eighth Amendment and the Eighth and Fourteenth Amendments requirement that the State's power to punish be exercised within the limits of civilized standards." *Woodson v. North Carolina*, 428 U.S. at 301, 304 (internal quotation marks removed). "The finality of the death penalty requires 'a greater deal of reliability when it is imposed.'" *Murray v. Giarratano*, 492 U.S. 1, 9 (1989) (quoting *Lockett v. Ohio*, 438 U.S. 604 (1978)).

The reasons for the "heightened reliability" requirement are obvious. Our criminal justice system is imperfect. Nearly 25 convicted citizens are exonerated every year. *Exonerations in the United States 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 524 (2005). Every incorrect verdict is an injustice, but "the quintessential miscarriage of justice is the execution of an innocent person." *Schlup v. Delo*, 513 U.S. 298-99 (1995). While absolute certainty is impossible in any criminal proceeding, "heightened reliability" jurisprudence has made it clear that such certainty is necessary in the capital arena because executing an innocent person is "constitutionally intolerable." *Herrera v. Collins*, 506 U.S. 390, 419 (1993) (O'Connor, J., concurring).

Thus, this Court must reverse the trial court to avoid a "constitutionally intolerable" event.

IV. DEPENDING ENTIRELY ON ACCOMPLICE CREDIBILITY, THE PROSECUTOR'S MISCONDUCT JEOPARDIZED THE FAIRNESS AND INTEGRITY OF MR. MCCOY'S TRIAL.

Questions Presented

A. Whether the prosecution's speaking objection that, "[Williams] obviously hasn't spoken to the defendant since he shot her boyfriend" amounted to improper vouching and deprived Mr. McCoy of a fair trial under the Due Process Clause of the United States Constitution and Article I, Section 7 of the Delaware Constitution. A00432 at 35.

B. Whether the prosecution's repeated remarks disparaging Mr. McCoy for exercising his right to self-representation and demeaning his ability to conduct that representation deprived Mr. McCoy of a fair trial under the Due Process Clause of the United States Constitution and Article I, Section 7 of the Delaware Constitution and violated Mr. McCoy's rights against cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section Eleven of the Delaware Constitution. A01638 at 153.

C. Whether the prosecution's repeated conduct, including exploiting Mr. McCoy's *pro se* status and threatening him, deprived him of a fair trial under the Due Process Clause of the United States Constitution and Article I, Section 7 of the Delaware Constitution and violated Mr. McCoy's rights against cruel and unusual

punishment under the Eighth Amendment to the United States Constitution and Article I, Section Eleven of the Delaware Constitution. A01638 at 153.

Scope of Review

A claim of prosecutorial misconduct is reviewed for harmless error if an objection was made at trial or the judge considered the issue *sua sponte*. *Baker v. State*, 906 A.2d 139, 148 (Del. 2006). First, the Court reviews the record *de novo* to determine whether misconduct occurred. *Baker*, 906 A.2d at 148. Second, if there is misconduct, the Court decides whether it prejudiced the defendant. *Id.*

Merits of Argument

"A prosecutor [has] the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Del. Lawyers' Rules of Prof'l. Conduct § 3.8, Comment [1]. "A prosecutor's role at a trial does not change where the defendant represents himself. As where the defendant is represented by counsel, the prosecutor 'may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.'" *Berger v. United States*, 295 U.S. 78, 88 (1935).

Prosecutorial misconduct requires a showing of (1) misconduct and (2) that (a) the misconduct clearly prejudiced substantial rights as to jeopardize the fairness

and integrity of the trial process or (b) the prosecutor's statements are repetitive errors that require reversal because they cast doubt on the integrity of the judicial process. *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986); *Hunter v. State*, 815 A.2d 730, 732 (Del. 2002); *see also Torres v. State*, 979 A.2d 1087 (Del. 2009). The Court engages in a three-factor inquiry to determine the prejudicial impact of the conduct: (1) the closeness of the case; (2) the centrality of the issue affected by the alleged error; and (3) the steps taken to mitigate the effects of the error. *Baker*, 906 A.2d at 149 (citing *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981)); *see also Govan v. State*, 655 A.2d 307 (Del. 1995). Any factor may be determinative. *Baker*, 906 A.2d at 149. Even if the three factors do not warrant reversal, it may be required if the prosecutor's statements were repetitive errors that cast doubt on the integrity of the judicial process. *Hunter*, 815 A.2d at 738.

Here, the prosecutor's misconduct was so pervasive and prejudicial to the integrity of the criminal process that the trial court, *sua sponte*, addressed the misconduct:

> The Court: The way the prosecution is handling this case. I don't appreciate smart-ass remarks, pardon my French but that's what it is, [Prosecutor]. You're being disrespectful to the Court as well as to Mr. Mr. McCoy and witnesses. Your antics in this trial have been totally disrespectful, in my view, of what properly should happen in a court procedure, particularly a serious matter like this. I don't appreciate off-the-cuff remarks. I don't appreciate your making frivolous statements in my view or matters which should be taken seriously. I don't like the cynicism that's being generated. I don't like the facial expression that you make sometimes. I can expect some of that from

> Mr. McCoy because he's a criminal defendant, to put it bluntly. He's charged with a crime. That makes him a criminal defendant. He's acting as his own counsel. He's inexperienced. You, sir, are an experienced trial lawyer and I expect some better conduct out of you and [the other prosecutor] to some extent. [The other prosecutor] is less culpable than you are, in my opinion. Let's get that out on the table. Okay?

A01638 at 153. The trial court was rightfully upset by the State's misconduct, but erred in not declaring a mistrial or even giving a curative instruction.

Given the degree in which the prosecution's misconduct permeated this eight-week trial, it is difficult, if not impossible, to give this Court the full flavor of the State's improprieties and "antics." The following are examples of the State's conduct that, individually and in total, require reversal.

A. Improper vouching

A prosecutor cannot vouch for the State's case. *Hardy v. State*, 962 A.2d 244, 247 (Del. 2008). "Improper vouching occurs when the prosecutor implies some personal superior knowledge, beyond that logically inferred from the evidence at trial that the witness testified truthfully." *White v. State*, 816 A.2d 776, 789 (Del. 2003). "Prosecutors generally cannot vouch for the credibility of a witness by stating or implying personal knowledge that the witness' testimony is correct or truthful." *Whittle v. State*, 77 A.2d 239, 243 (Del. 2013); *see also Torres v. State*, 979 A.2d 1087 (Del. 2009); *Hardy v. State*, 962 A.2d 244 (Del. 2008); *Clayton v. State*, 765 A.2d 940, 942 (Del. 2001).

Here, the prosecutor vouched with an improper speaking objection to Mr. McCoy's examination of Williams:

> Q.: Did you know – did you know from personal knowledge, did you know that Deshaun White spoke to you –
> [Prosecutor]: Objection, Your Honor.
> Again, this witness has testified she didn't even know the guy. She hasn't seen him. She didn't talk to him. *She obviously hasn't spoken to the defendant since he shot her boyfriend.* How would she know anything about Deshaun White; what he said to anybody?

A00429 at 23. Mr. McCoy objected and, out of the jury's presence, addressed the Court:

> My major issue is that, on objection, [the prosecutor] stood up, pointed towards my direction and said: 'That's because she hasn't seen the defendant since he shot and killed James Munford;' and I think that is inappropriate.

A00432 at 35. The Court responded that it did not hear the prosecutor's comment but if it "was made, it is inappropriate; and [the prosecutor] should not make that statement if he said that." A00432 at 35. Mr. McCoy provided the court a transcript of the prosecutor's statement for review and requested a curative jury instruction. A00453-54 at 120-21. The prosecutor claimed he was merely restating the witness's testimony. A00454 at 121. Mr. McCoy countered:

> the problem with this is that the objection was only to Deshaun White -- whether or not she spoke to him. Rather than objecting to that and stating the reason, he injected into the conversation that—when the defendant killed her boyfriend, which had nothing to do with –

A00454 at 122-123. The trial court refused to take any action. A00454 at 123.

If a prosecutor implies conclusions, the court must "verify that the evidence *actually* shows that his statement was accurate." *Whittle,* A.2d at 243 (emphasis in original). If there is "significant contradictory evidence against, and little supporting evidence for, that characterization, the prosecutor's statement implied conclusions beyond those that could logically be inferred from the record evidence. That alone amounted to improper vouching." *Id.* Here, there was not only an open question whether Williams knew White, but Williams never testified that Mr. McCoy shot her boyfriend. The prosecution's statement, "She obviously hasn't spoken to the defendant since he shot her boyfriend" was beyond the record, and was improper vouching of the State's case and likely inflamed the jury's passions.

There was no physical evidence linking Mr. McCoy to Munford's murder, and, therefore, the credibility of the State's witnesses was central. Furthermore, the fact that the State's key witnesses were all accomplices made this a close case, at best. As discussed, Williams's and White's accomplice testimony, the only witnesses to the alleged crime, was littered with lies and contradictions. Their credibility was vigorously contested throughout the case. Given the questionable credibility, there was great danger that the jury might credit "special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office, but also because of the fact-finding presumably available to the office." AM. BAR. ASS'N, STANDARDS FOR CRIMINAL JUSTICE 3-5.8 (1993). The

prosecutor improperly inserted his personal opinion, tipping the question regarding credibility in the State's favor. The trial court failed to remedy or even mitigate the impropriety, which was part of a pattern of conduct by the State that impugns the integrity of the judicial process. Therefore, the State's conduct warrants reversal.

B. Disparaging Defendant and his Right to Self-Representation

A defendant has a right, under the Sixth Amendment to the United States Constitution, to precede *pro se* in a criminal trial. *Faretta v. California*, 422 U.S. 806 (1975). Article I, Section 7 of the Delaware Constitution, *explicitly* grants a defendant this right: "[i]n all criminal prosecutions, the accused hath a right to be heard by himself or herself and his or her counsel." *See Hooks v. State*, 416 A.2d 189 (Del. 1980) (finding "it is clear the Constitutional provision was addressed to securing both of these equally important fundamental rights."). Prosecutorial misconduct that disparages a defendant for making the choice to proceed *pro se* interferes with his right to a fair trial and his right of self-representation. Additionally, a lawyer shall not "engage in conduct intended to disrupt a tribunal or engage in undignified or discourteous conduct that is degrading to a tribunal." *Bunting v. State*, 907 A.2d 145 (Del. 2006); *see Christopher v. State*, 824 A.2d 890, 893 (Del. 2003) ("This high ethical standard has been the hallmark of Delaware lawyers and must be maintained").

In this case, the State openly and repeatedly ridiculed and interfered with Mr. McCoy's right to self-representation by commenting on his lack of knowledge and preparation. The tone was set during a discussion about Mr. McCoy's right to wear "civilian" clothes at trial. The prosecutor stated, "I don't care. You can dress him up. He's still a murderer." A00252 at 7.

The State's misconduct continued throughout the trial. After Mr. McCoy sought to question a witness about the definition of perjury, the prosecutor stated:

> The defendant may not know because *he is a novice in the legal field, notwithstanding his criminal record,* what the elements of perjury are.

That same day, during argument as to whether the "door was opened" for the State to bring in evidence of gang membership, the prosecutors states:

> Well, *unlike the defendant, as I listen to a witness I make copious notes* detailing the witness' response.

The defendant objected to not having been permitted to previously view the box of Loretta Williams' gun and had given to the detective. The prosecutor noted the fact that she turned this box over was in the officer's supplemental report, and Mr. McCoy "*couldn't even bother to read it*." A00937 at 23-24. That same day, regarding certain bullets being admitted, the prosecutor said:

> Well, *obviously, the defendant has not been reading what the State has turned over* to the defense, certainly the defense counsel.
>
> the report from Carl Rone, *if the defendant read it with some insight*[…].

A00939 at 29-30; A00940 at 34.

During argument regarding introducing White's statement through Detective Ryde, Mr. McCoy relented, stating he had no objection if only the statement of the witness was entered into evidence and not the officer's. The prosecutor responded, "I have been to law school, Your Honor. I understand the rules." A00935 at 14.

During argument on whether Mr. McCoy could present a witness to relay a statement made by White regarding White's guilt, the prosecutor said, "He's trying to talk the Court into going against the rules of evidence with some hearsay *jailhouse legal theory*." A01344 at 130 (emphasis added). He further commented, "we follow the rules of evidence around here." A01344 at 132. Then he added:

> ***The defendant has not prepared his case adequately.*** He has relied on hearsay testimony of friends and relatives who are willing to get on the stand to say whatever he wants them to say, and now he's angry because he can't get it in. ***That's what happens when you rely on made-up evidence.***

A01344 at 130-133 (emphasis added).

When Mr. McCoy objected to the State's cross-examination question of a witness called in the defense's case, the prosecutor responded, in front of the jury, "That's what happens when you call a State's witness." A01347 at 141.

During the penalty phase, Mr. McCoy noticed that the State had photographs of tattoos purportedly belonging to him and requested to see them. The prosecutor responded, "[l]ook at your arm." The Court admonished the State, saying, "All

right. Comments should be directed to the Court, not the parties." A01573 at 34. The discussion regarding the tattoos continued, prompting further admonishment:

> The Court: *No displays of emotion should be shown by counsel and, [Prosecutor], you have done this before. I'm going to caution you this time. Pleas*e.
> [Prosecutor]: I find it incredible that the defendant can stand here and look in the Court's eyes and *lie blatantly* that these pictures are not of his arms when they are full of the same tattoos. It just boggles my brain.

A01573 at 35-36.

The State's repetitive misconduct casts doubt on the integrity of the judicial process. Many of the State's remarks do not merely besmirch Mr. McCoy, but they also directly or impliedly denigrate a defendant's choice to exercise his fundamental right of self-representation and his capability to exercise that right.

C. Exploiting and Threatening the Defendant

There comes a point where holding the *pro se* defendant to the standard of a competent lawyer reduces a trial to a farce and soils the integrity of the judicial process. *Faretta v. California*, 422 U.S. at 833 n.43. This becomes particularly true depending on the seriousness and complexity of the matter, the knowledge and intelligence of the defendant, and zealousness of the prosecution. Prosecutorial overreach in the context of a *pro se* defendant may amount to misconduct. *See e.g.*, *DeLuzio v. People*, 494 P.2d 589, 593 (Col. 1972) ("The duty of the district attorney extends not only to marshaling and presenting evidence to obtain a

conviction, but also to protecting...the accused from having a conviction result from misleading evidence."). Moreover, our Constitutional interest in a fair trial obligates the trial court to protect a *pro se* defendant from such prosecutorial overreach, particularly the rules of evidence. *See* Myron Moskovitz, *Advising the Pro Se Defendant: The Trial Court's Duties Under Faretta*, 42 BRANDEIS L.J. 329, 339 (2004). The right to a fair trial imposes a "special obligation on the trial court to protect a *pro se* defendant from an overreaching prosecutor who tries to take advantage of defendant's lack of legal knowledge, particularly the rules of evidence." *See, e.g.*, *Commonwealth v. Sapomik*, 549 N.E.2d 116, 120 n.4 (Mass. App. Ct. 1990) (holding a judge should intervene, once evident that a prosecutor is "engaging in improper tactics" and "taking advantage" of a defendant's *pro se* status, in order to protect the parties' rights to a fair trial).

In this case, Mr. McCoy was provided some leeway by the trial court, but was clearly overwhelmed by the enormity of the proceedings along with a prosecution that seized every opportunity to take advantage of his unrepresented status, instead of seeking justice. The prosecution actively took advantage of Mr. McCoy's *pro se* status and prevented intervention from his standby counsel. One of the most obvious exploits was the State's introduction of evidence through several witnesses for largely speculative and inadmissible hearsay statements that "corroborated" accomplice testimony, without objection from Mr. McCoy. For

example, Da'Janiel Smith, testified that Mr. McCoy came over his place with a sandwich bag containing ecstasy pills. A00858 at 203-204. Defense counsel would have clearly objected, and the objection would likely have been sustained by a trial court. Similarly, Agealena Sauls, testified in wholly speculative fashion that Mr. McCoy gave someone ecstasy. A00894 at 14. There was no proof that Mr. McCoy had ecstasy; yet this inadmissible testimony not only gave the jury the impression that Mr. McCoy had ecstasy, but it was the same ecstasy taken from Munford. Another example is Loretta Williams's testimony that she spoke an "Isaiah" who told her "the cops were coming so he had to throw it in the bushes." A00934 at 12. The State introduced this inadmissible hearsay to lend credibility to a case lacking corroboration. While the prosecution engaged in this exploitative behavior, it went out of its way to prevent Mr. McCoy from getting advice from standby counsel. The State repeatedly complained about these communications for the sole purpose of taking advantage of his *pro se* status.[20] This conduct warrants reversal.

The State's misconduct continued into the penalty phase. After a recess, Mr. McCoy told the court that one prosecutor threatened him. While testifying to Mr. McCoy's alleged gang memberhsip, a police officer discussed an interview where Mr. McCoy allegedly "snitched," a violation of the gang's oath. Per Mr. McCoy,

[20] For example, during trial, the State tried preventing Mr. McCoy from getting advice on how to conduct cross examination of the State's key witness. May 31, 2012 Trans.: 119.

the prosecutor mentioned Mr. McCoy "ratting on [his] associates and friends and how they would possibly be coming after [him] and…he planned to bring this out." A01631 at 127-128. The prosecutor stated that if he breaks his oath "that the inmates are going to get [him]" and that he is "hiding" at the correctional facility. A01631 at 127-128. Mr. McCoy told the court, "I feel as though [the Prosecutor] is in a sense trying to bring these things out in order to possibly have me threatened by this gang or possibly be attacked or killed possibly at some point in the future because they think that I said something which I did not." A01631 at 127-128.

When questioned, the prosecutor confirmed the statement but claimed, "I was not talking to him, Your Honor, at all. I was talking to [the other prosecutor] and Detective Ryde." A01631 at 129. The court took no action and stated:

> I hope that this communication did not take place. If you made that statement, whether it's between you and Mr. McCoy or between you and someone else, it should not be made in open court if it was made, and I'm not saying you admit the fact that you made these comments, but they should not be made. If you expect that any comments like that or similar to that, it is not to be overheard in open Court. Okay?

A01632-33 at 132-133. Without denying the statement, the prosecutor responded, "Yes, your honor." A01633 at 133. This intimidating conduct warrants admonishment by the Court, and demands reversal. The cumulative effect of the State's conduct distorted compromised the integrity of the judicial process.

V. THE DEATH PENALTY STATUTE VIOLATES THE DUE PROCESS CLAUSE AND THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Question Presented

Whether, in light of *Alleyne v. United States*, 133 S. Ct. 2151 (2013), Delaware's death penalty process violates the Due Process Clause and the Sixth Amendment to the United States Constitution by authorizing a judge to determine (1) mitigating circumstances and (2) whether aggravation outweighs mitigation. A01673-87.

Scope of Review

The Court reviews *de novo* whether a statute is constitutional. *Zebrowski v. State*, 12 A.3d 1115, 1119 (Del. 2010).

Merits of Argument

In *Ring v. Arizona*, 536 U.S. 584 (2002), the United States Supreme Court held that "[c]apital defendants…are entitled to a jury determination on any fact on which the legislature conditions an increase in their maximum punishment." *Id.* at 589; *see also Apprendi v. New Jersey*, 530 U. S. 466, 490 (2000).

In *Alleyne v. United States*, 133 S. Ct. 2151 (2013), the United States Supreme Court overruled its prior "distinction between facts that increase the statutory maximum and facts that increase only the mandatory minimum." The

Court explained that "[i]t is impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime." *Id.* at 2160.[21]

Under Delaware law, a defendant can only be sentenced to death after a specific factual finding that the aggravating circumstances outweigh the mitigating circumstances. 11 *Del. C.* § 4209(b). This factual finding exposes the defendant to a greater punishment than he would otherwise receive: death, as opposed to life. Under *Ring*, *Apprendi*, and now *Alleyne*, this finding must be made by a jury. Just as "[i]t is impossible to dissociate the floor of a sentencing range from the penalty affixed to the crime," it is impossible to dissociate non-statutory aggravators and mitigating factors that are "part of the total mix" in weighing whether to impose death. Therefore, Delaware's capital punishment statute is unconstitutional.

[21] In *Brice v. State*, 815 A.2d 314 (Del. 2003), this Court held that a jury is not required to "first find the existence of any specific non-statutory aggravating factor before it may be considered by the trial judge" and that "*Ring* does not…require that the jury find every fact relied upon by the sentencing judge in the imposition of the sentence." *Id.* at 322. The Court distinguished facts that *increase* the potential penalty from other facts and determined that *Ring* applies to the former but not the latter. *Id.* The Court reasoned that "non-statutory aggravators are part of the total mix, including mitigating factors, when the sentencing judge performs his function during the weighing phase" and do not work to increase a defendant's penalty. *Id. Brice*, however, was decided before the United States Supreme Court clarified its *Apprendi-Ring* decisions in *Alleyne*.

CONCLUSION

Therefore, for the reasons set forth above, this Court should reverse Mr. McCoy's convictions and sentence and remand the case for further proceedings.

Respectfully submitted,

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April 14, 2014

EXHBIT A

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

STATE OF DELAWARE

VS.

ISIAH W MCCOY

Alias: See attached list of alias names.

DOB: 07/28/1987
SBI: 00370378

CASE NUMBER:
1005008059A

CRIMINAL ACTION NUMBER:
IK10-06-0526
MURDER 1ST(F)
IK10-07-0084
MURDER 1ST(F)
IK10-06-0527
ROBBERY 1ST(F)
IK10-06-0528
PFDCF(F)
IK10-07-0085
PFDCF(F)
IK10-07-0086
CONSP 2ND(F)

COMMITMENT

SENTENCE ORDER

NOW THIS 11TH DAY OF OCTOBER, 2012, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. Costs are hereby suspended. Defendant is to pay all statutory surcharges.

AS TO IK10-06-0526- : TIS
MURDER 1ST

Effective May 22, 2010 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction at Supervision level 5 until such time that the defendant is put to Death pursuant to 11 DEL.C. 4209

AS TO IK10-07-0084- : TIS
MURDER 1ST

- The defendant is placed in the custody of the Department of Correction at Supervision level 5 until such time that

STATE OF DELAWARE
VS.
ISIAH W MCCOY
DOB: 07/28/1987
SBI: 00370378

the defendant is put to Death pursuant to 11 DEL.C. 4209

AS TO IK10-06-0527- : TIS
ROBBERY 1ST

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5

The first 5 years of this sentence is a mandatory term of incarceration pursant to DE11083200A2FB .

AS TO IK10-06-0528- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5

The first 5 years of this sentence is a mandatory term of incarceration pursant to DE111447A00AFB .

AS TO IK10-07-0085- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5

The first 5 years of this sentence is a mandatory term of incarceration pursant to DE111447A00AFB .

AS TO IK10-07-0086- : TIS
CONSP 2ND

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

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
ISIAH W MCCOY
DOB: 07/28/1987
SBI: 00370378

CASE NUMBER:
1005008059A

Have no contact with the victim's family.

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 WILLIAM L WITHAM JR.

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
ISIAH W MCCOY
DOB: 07/28/1987
SBI: 00370378

CASE NUMBER:
1005008059A

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	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	
PROSECUTION FEE ORDERED	
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	6.00
DELJIS FEE ORDERED	6.00
SECURITY FEE ORDERED	60.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	90.00
SENIOR TRUST FUND FEE	
TOTAL	162.00

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
ISIAH W MCCOY
DOB: 07/28/1987
SBI: 00370378

CASE NUMBER:
1005008059A

ISAIAH W MCCOY
ISAIAH MCCOY
ISAIAH MC COY
ZAE MCCOY
ISAIAH W MC COY
SRAH MCCOY
ISAIAH O MCCOY

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
ISIAH W MCCOY
DOB: 07/28/1987
SBI: 00370378

CASE NUMBER:
1005008059A

AGGRAVATING
PRIOR VIOLENT CRIM. ACTIVITY
LACK OF AMENABILITY
CUSTODY STATUS AT TIME OF OFFENSE
REPETITIVE CRIMINAL CONDUCT