IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE	)	
	)	
v.	)	
	)	ID No. 2411006884
PHILLIP C. HARRIS,	)	
	)	
Defendant.	)	

Submitted: March 17, 2026
Decided: March 30, 2026

ORDER

Upon Defendant Phillip Harris' Motion to Dismiss,
DENIED.

Upon Defendant Phillip C. Harris' Motion to Sever Trial of August 16, 2022 Counts from July 29, 2020 Counts,
DENIED.

Upon Defendant Phillip C. Harris' Motion to Compel Brady Disclosures,
DENIED.

Erika R. Flaschner, Esquire, William H, Leonard, Esquire and Michael W. Slights, Esquire, Deputy Attorneys General, DEPARTMENT OF JUSTICE, 820 North French Street, Wilmington, Delaware 19801, Attorneys for the State.

James J. Haley, Jr. Esquire, FERRARA & HALEY, 1716 Wawaset Street, Wilmington, Delaware 19806, Attorney for Defendant Phillip C. Harris.

WHARTON, J.

This 30th day of March, 2026, upon consideration of Defendant Phillip C. Harris' ("Harris") three motions: (1) Motion to Dismiss; (2) Motion to Sever Trial of August 16, 2022 Counts from July 29, 2020 Counts; and (3) Motion to Compel Brady Disclosures,[1] and the State's Response to Defendant's Pretrial Motions,[2] it appears to the Court that:

1. Harris was indicted, along with eight others, in the prosecution of an alleged criminal street gang known as Exit 4. The most recent re-indictment contains 167 charges.[3] Harris is charged in 40 of those counts. His charges are Illegal Gang Participation, Murder First Degree (two counts), Attempted Murder First Degree (12 counts), Possession of a Firearm During the Commission of a Felony ("PFDCF") (16 counts), Conspiracy First Degree (two counts), Receiving Stolen Property (two counts), Conspiracy Second Degree (three Counts), Robbery First Degree, and Wearing a Disguise During the Commission of a Felony. Relevant to Harris' Motion to Sever, he is charged with the murder of Khalil Ameer-Bey on July 29, 2020 and related charges.[4] Charges related to this incident are also charged as predicates three, four , and five of the Illegal Gang Participation count.[5] Harris also is charged with

[1] Def.'s Pretrial Motions, D.I. 33.
[2] State's Resp., D.I. 35.
[3] Reindictment, D.I. 22.
[4] *Id.* at Counts 3-9.
[5] *Id.* at Count 1.

murder and related charges in the death of Carrie Mondell on August 16, 2022.[6] Those related charges include multiple counts of attempted murder and PFDCF.[7] Predicates 18 through 21 of the Illegal Gang Participation charge reference this incident.[8]

2. The State alleges that Harris is a member of the criminal street gang Exit 4 which is affiliated with another criminal street gang known as NorthPak.[9] Opposing gangs, called "opps" include the M-Block Grimey Savages ("MGS").[10] Gang members express their allegiance to their own gang and their antipathy to "opps" on social media, often leading to violence.[11]

3. According to the State, Kahlil Amir-Bey was murdered shortly before 2:00 a.m. on July 29, 2020 in the 900 block of Lombard Street in Wilmington.[12] When police arrived, they found Amir-Bey lying on the sidewalk with multiple gunshot wounds.[13] Four 9mm shell casings from the scene and one projectile recovered from Amir-Bey's body were ballistically matched with a gun that had been used in prior shootings in Wilmington.[14] Witnesses described a dark-colored

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[6] *Id.* at Counts 50-76.
[7] *Id.* at Counts 53-75.
[8] *Id.* at Count 1.
[9] State's Resp. at ¶ 1, D.I. 35.
[10] *Id.*
[11] *Id.* ¶ 2.
[12] *Id.,* at ¶ 5.
[13] *Id.,*
[14] *Id.*

SUV arriving in the area and then gunfire erupting.[15] Later witness interviews put Harris as well as codefendants Nasiir Watson and Nyair Small ("Small") in the vehicle.[16] Witnesses also describe statements Harris made discussing the murder.[17]

4. The other murder with which Harris is charged is the killing of Carrie Mondell on August 16, 2022.[18] On that date, just after 4:50 p.m., Wilmington Police responded to a shooting at the intersection of 7th and Washington Streets.[19] When they arrived, they found two people shot in the head, Carrie Mondell, who died the next day, and "M.M." who survived.[20] Surveillance cameras at the scene of the shooting identified the suspects' vehicle as a black Jeep Wrangler.[21] Nine 9mm shell casings and four 7.62 spent casings were located in a black Jeep Wrangler that had been reported stolen from the Paladin Club Apartments near Edgemoor and recovered at the Top of the Hill Apartments.[22] A cooperating witness told police that Small had admitted his involvement in the shooting and implicated Harris as well.[23] Other evidence corroborated that cooperating witness.[24]

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[15] *Id.* at ¶ 6.
[16] *Id.* at ¶ 7.
[17] *Id.*
[18] Reindictment, at Count 52, D.I. 22.
[19] State's Resp. at ¶ 17, D.I. 35.
[20] *Id.* at 18.
[21] *Id.*
[22] *Id.* at ¶ 20.
[23] *Id.* at ¶ 21.
[24] *Id.* at ¶ 22.

5. **Motion to Dismiss.**[25] Harris moves to dismiss Counts 56-75 of the Reindictment claiming a lack of probable cause and prosecutorial misconduct.[26] Those charges allege multiple counts of Attempted Murder First Degree and paired counts of PFDCF all related to the August 16, 2022 shooting.[27] In each attempted murder count, the alleged victim is a pedestrian who is not identified by name, but rather, by some other description such as the clothing the person was wearing.[28] The motion argues that "The State's evidence does not establish that each bullet was intended for a different, single individual out of the ten individual who were seen reacting [to the gunshots]."[29] From this contention, Harris posits that the prosecutors here have violated Rule 3.8 of the Delaware Rules of Professional Conduct by prosecuting a charge that they know is not supported by probable cause.[30] He attempts to buttress this assertion by citing *Taylor v. State*[31] for the proposition that unsupported charges could improperly play a role in convicting a defendant of other charges.[32] If the Court does not grant his motion, Harris asks the Court to require the State to produce "a list of all drive-by shooting prosecutions in Delaware in the

[25] Def.'s Pretrial Motions at ¶¶ 9-16, D.I. 33.
[26] *Id.* at ¶ 9.
[27] *Id.,* at ¶ 10, 11.
[28] *Id.,* at ¶ 7.
[29] *Id.,* at ¶ 12.
[30] *Id.* at ¶ 14.
[31] 827 A.2d 24, 28-29 (De. 2004).
[32] Def.'s Pretrial Motions, at ¶ 15, D.I. 33.

last twenty years, and identify which of those prosecutions resulted in Attempted Murder First Degree charges for every pedestrian on the block in question and which prosecutions resulted in only Reckless Endangering charges…"[33] Relying on *State v. McGuiness,*[34] he seeks this information to determine if he is the victim of selective prosecution.[35]

6. The State responds that Harris' lack of probable cause argument ignores the fact that the Reindictment returned by the grand jury is itself a finding of probable cause.[36] In the State's view, this argument is actually an insufficiency of the evidence argument that Harris can raise at trial at the appropriate time.[37] Turning to Harris' request for records of drive-by shooting prosecutions from the last twenty years, the State disputes *McGuiness*' applicability, noting that the court in *McGuiness* permitted limited discovery only after McGuiness had established a colorable basis for a selective prosecution defense.[38] Here, Harris has not established that the State employed an impermissible standard such as race, religion, or other arbitrary classification in charging Harris, a necessary prerequisite for making out a selective prosecution claim.[39]

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[33] *Id.* at ¶ 16.
[34] 2022 WL 1184407 (Del. Super. Ct. Apr. 13, 2022).
[35] Def.'s Pretrial Motions, at ¶ 16, D.I. 33.
[36] State's Resp. at ¶ 25, D.I. 35.
[37] *Id.* at ¶ 26.
[38] *Id.* at ¶ 28.
[39] *Id.* at ¶ 29.

7. When the grand jury returns a true bill, it necessarily has made a determination that there is probable cause to believe that the defendant committed the crimes charged in the indictment - "'[t]he indictment itself is in effect a finding of probable cause.'"[40] As the State correctly points out, Harris' probable cause challenge is really an insufficiency of the evidence argument more properly made at trial. Were it otherwise, the Court would be obliged to hold a hearing where the State would have an opportunity to present whatever evidence it felt necessary to establish probable cause. Such a hearing would be the equivalent of a preliminary hearing after the indictment, a procedural *non sequitor*. Should Harris believe the State presented insufficient evidence on the disputed charges at trial, after the State has had a full opportunity to present its evidence, he is free to move for judgment of acquittal.

8. *Taylor* is procedurally inapposite. In *Taylor,* the Delaware Supreme Court reversed the defendant's conviction after the prosecutor conceded in summation that the jury, "'probably can't say beyond a reasonable doubt that there was an intent to appropriate [the funds alleged in Counts 1 through 4]'" and the trial judge failed "to take corrective action to ameliorate the prejudice" by granting the defendants motion for judgment of acquittal.[41] In this case, the prosecutors have made no such

[40] *Shaw v. State,* 2024 WL 4296867, at *2 (Del. Sept. 25, 2024) (quoting *Joy v. Superior Ct.,* 298 A.2d 315, 316 (Del. 1972).
[41] *Taylor,* 827 A.2d at 28.

concession and the Court has not heard what evidence the State has to present on its theory of the case.[42] The Court is confident that, were the prosecutors to come to believe the attempted murder charges were unsustainable, they would not continue to pursue them.[43] Certainly, the Court would grant a motion for judgment of acquittal if it found it to be meritorious.

9. *McGuiness* is similarly unhelpful to Harris in his alternative request for additional discovery. Leaving aside the breadth of the request – twenty years – and whether it even is possible to cull the requested information from the State's records,[44] Harris has not established the colorable basis for a selective prosecution claim that the *McGuiness* Court found to be a necessary prerequisite before granting her additional discovery.[45]

10. Selective prosecution of a statute against a particular class violates the Equal Protection Clause of the 14th Amendment. But, where the State's action is not discriminatory on its face, as here, Harris has the burden of showing purposeful

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[42] The State has represented that it will rely on the doctrine of transferred intent codified in 11 *Del. C.* § 262. State's Resp. at 11, n.11.

[43] The Court views defense counsel's accusation that the prosecutors behaved unethically to be needlessly overly zealous, particularly in light of the history of the case.

[44] To the extent such records are publicly available, they are accessible by Harris as well.

[45] *McGuiness,* 2022 WL 1184407, at *2.

discrimination against a particular class.[46] In *State v. Wharton,*[47] the Court laid out the standard a defendant must meet in order to obtain discovery on a claim of selective prosecution. "The defendant must make a showing of a 'colorable basis' or 'colorable entitlement' to such discovery.[48] Harris has not attempted to make that showing in order to meet his burden of demonstrating that his prosecution was '"deliberately based on an unjustifiable standard such as race, religion or other arbitrary classification"' which would entitle him to discovery (or an evidentiary hearing.)[49] Absent such a showing, the Court will not grant Harris' requested alternate request. The Motion to Dismiss is **DENIED.**

11. **Motion to Sever.**[50] Harris' second motion asks the Court to sever the August 16, 2022 counts, which include the count alleging the murder of Carrie Mondell, from the July 29, 2020 counts, which include the count alleging the murder of Khalil Ameer-Bey.[51] He contends that evidence of the 2020 drive-by shooting would not be admissible in a separate trial of the 2022 drive-by shooting and that the

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[46] *Ward v. State,* 414 A.2d 499, 500 (Del. 1980). *See also, State v. Walton,* 2002 WL 126400, at *3 (Del. Super. Ct. Jan. 17, 2002) holding that a defendant seeking an evidentiary hearing on a selective prosecution allegation must first present some evidence tending to establish the essential elements of the claim, including that the charging decision was made by an improper purpose.
[47] 1991 WL 138417, at *7 (Del. Super. Ct. June, 3, 1991).
[48] *Id.* at *5.
[49] *Id.* at *4 (quoting *Oyler v. Boyles,* 368 U.S. 448, 456 (1962)).
[50] Def.'s Pretrial Mtns. at ⁋⁋ 17-21, D.I. 33.
[51] *Id.*

materials provided by the State in discovery contain no probative evidence that tends to show Harris participated in the 2022 incident.[52] He claims he would be prejudiced by joinder of the 2020 shooting with the high profile killing of Carrie Mondell because a jury might conclude that because he committed the 2020 shooting beyond a reasonable doubt he probably committed the 2022 murder as well.[53]

12. The State responds that the incidents are properly joined. The State looks to other gang participation cases, such as *Taylor v. State,*[54] and *Phillips v. State,*[55] to explain way severance is not warranted.[56] The gang participation charge covers the timeframe from January 1, 2020 through December 2, 2024 and identifies 30 predicate offenses, of which Harris is mentioned in eight, including the murders of Khalil Ameer-Bey and Carrie Mondell.[57] Because the predicate offenses, whether committed by Harris or other gang members, are necessary elements of the Illegal Gang Participation charge, severing any of these offenses eliminates necessary elements needed to prove that charge.[58] All of the underlying predicates, including those committed by Harris are "inextricably intertwined" with each other.[59]

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[52] *Id.* at ¶ 19.
[53] *Id.* at ¶¶ 20, 21.
[54] 76 A.3d 791 (Del. 2013).
[55] 154 A.3d 1146 (Del. 2017).
[56] State's Resp., at ¶¶ 36-42, D.I. 35.
[57] *Id.* at ¶ 37. *See also* Reindictment, at Count 1, D.I. 22.
[58] *Id.* at ¶¶ 38, 39.
[59] *Id.* at ¶ 40.

According to the State, *Taylor* addresses this issue directly, holding that evidence of predicate offenses is relevant and necessary to prove the existence of a gang and its criminal purpose.[60] According to the State, the Delaware Supreme Court came to the same conclusion in *Phillips,* reaffirming *Taylor*, in holding that the defendant's criminal behavior was "inextricably intertwined" with other criminal behavior and was relevant to show the motive for the defendant's actions.[61] Other cases decided by this Court – *State v. Reese,*[62] *State v. Calhun,*[63] and *State v. Coffield*[64] - also denied severance in the gang prosecution context.[65] The State argues concerns about the jury cumulating can be alleviated by appropriately instructing the jury.[66] Finally, the State points to *Lloyd v. State,*[67] a racketeering case, to rebut Harris' argument that the higher profile of the Mondell homicide, when compared to the Ameer-Bey homicide, might cause a jury to convict on less than proof beyond a reasonable doubt if the evidence in the Ameer-Bey killing is sufficiently strong.[68] In *Lloyd,* the Delaware Supreme Court affirmed this Court's denial of severance where Lloyd's

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[60] *Id*. at ¶41.
[61] *Id.* at ¶ 42.
[62] 2019 WL 1897459 (Del. Super. Ct. Apr. 12, 2019).
[63] ID No. 2004002081 (Nov. 9, 2021, Medinilla, J.) (unreported Order, attached to State's Resp at Ex. A).
[64] 2022 WL 17684823 (Del. Super. Ct. Dec. 8, 2022).
[65] State's Resp. at ¶¶ 43-45, D.I. 35.
[66] *Id.* at ¶ 46.
[67] 249 A.2d 768 (Del. 2021).
[68] State's Resp. at ¶ 47, D.I. 35.

codefendant, but not Lloyd was charged with the high profile shooting of a six-year old boy, paralyzing him.[69]

13. Under Delaware law, a criminal defendant may be tried simultaneously for two or more offenses.[70] Offenses will only be tried together if they are "of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."[71] The Court, however, has discretion to sever if the defendant shows "a reasonable probability that substantial prejudice may result from a joint trial."[72] The Defendant must show that the alleged prejudice manifestly outweighs the "dominant concern" of judicial economy and efficiency.[73] A showing of hypothetical prejudice is not enough.[74]

14. Delaware recognizes three types of prejudice:

> (1) when the jury may cumulate evidence of the various crimes charged and find guilt when, if considered separately, it would not;

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[69] *Lloyd,* 249 A.3d at 777.
[70] Super. Ct. Crim. R. 8(a).
[71] *Id.*
[72] *Skinner v. State*, 575 A.2d 1108, 1118 (Del. 1990) (citing *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978)); *see* Super. Ct. Crim. R. 14.
[73] *State v. Howard*, 1996 WL 190045 at *4 (Del. Super. 1996) (citing *Drew v. United States*, 331 F.2d 85 (D.C. Cir. 1964); *United States v. Kenny*, 645 F.2d 1232 (9th Cir. 1981)).
[74] *Skinner*, 575 A.2d at 1118 (citing *Bates*, 386 A.2d at 1142).

> (2) when the jury may use evidence of one crime to infer a defendant's general criminal disposition in order to determine guilt of another crime/crimes;
>
> (3) when a defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.[75]

"The defendant has the burden of demonstrating such prejudice and mere hypothetical prejudice is not sufficient."[76]

15. Harris' severance motion proceeds from a flawed premise – that the evidence of the 2020 shooting would not be admissible in the 2022 shooting because its admission cannot pass muster under *Getz v. State*.[77] The issue of severance of charges in the gang prosecution context in not new to either the Delaware Supreme Court or to this Court. The Delaware Supreme Court has made plain repeatedly that predicate offenses are elements of an Illegal Gang Participation charge and are admissible to prove that charge.[78]

16. In *Taylor,* the Delaware Supreme Court held that evidence supporting the defendant's murder, attempted murder, and additional felony charges was "inextricably intertwined" with his gang participation charge, and, thus, the charges

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[75] *Ashley v. State*, 85 A.3d 81, 84–85 (Del. 2014) (citing *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988)).
[76] *Skinner v. State,* 575 A.2d 1108, 1118 (Del. 1990).
[77] 538 A.2d 726 (Del. 1988).
[78] *See, eg., Taylor, Phillips,* and *Lloyd.*

properly were tried together.[79] "The evidence was relevant to prove the existence of a gang, as well as [the defendant's] knowing promotion of the [gang's] criminal purpose.[80] That Court came to the same conclusion in *Phillips,* also a gang participation case. In that case, Phillips argued that joinder of the gang participation charges with his murder charges would allow the jury to hear evidence about the conduct of others that the jury could improperly attribute to him.[81] There, the Court found that the defendant's criminal behavior was "inextricably intertwined" with other criminal behavior and was relevant to demonstrate to motive for Phillips' actions.[82]

17. Both the Ameer-Bey and Mondell murders are predicate offenses necessary to prove the Illegal Gang Participation charge. All of Harris' alleged crimes are inextricably intertwined because they are evidence of the existence of the Exit 4 gang, the pattern of criminal activity, and Harris' knowing participation in the gang. Evidence establishing the existence of a gang and the motive for the homicides is "evidence supporting the charges in the indictment [and is] 'inextricably intertwined' and, therefore, admissible."[83] Evidence of both murders is admissible

[79] *Taylor,* 76 A.3d at 801.
[80] *Id.*
[81] *Phillips,* 154 A. 3d at 1158.
[82] *Id.* at 1158-59.
[83] *Phillips,* 154 A.3d at 1159 (quoting *Taylor,* 76 A.3d at 801).

as an element of the Illegal Gang Participation charge and not as crimes, wrongs or other acts under D.R.E. 404(b). Accordingly, a *Getz* analysis is not required.[84]

18. The Court is convinced that an appropriate jury instruction, such as the ones given in *Phillips, Coffield*, and *Lloyd* will alleviate concerns about the jury inferring a general criminal disposition on Harris' part. In *Lloyd*, the jury was instructed:

> The defendants are each charged with separate offenses that are set forth in the indictment. These are each separate and distinct offenses, and you must independently evaluate each offense. The fact that you reach a conclusion with respect to one offense, or with regard to one defendant, does not mean that the same conclusion will apply to any other charged offense or to any other charged defendant. Each charge before you is separate and distinct, and you must evaluate evidence as to one offense independently from evidence of each other offense and render a verdict as to each individually.[85]

"Juries are presumed to follow the court's instructions."[86] There is no reason to believe the jury selected in this case will not follow a similar instruction. Moreover, the Court is unimpressed with Harris' view of the strength of the State's case based on what he has gleaned through discovery. In criminal cases, the Court does not make a pretrial assessment of the strength of the State's evidence.

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[84] *See, Lloyd,* 249 A.3d at 783 ("Instead, the State relied on the videos to prove the existence of a drug dealing enterprise involving the individuals featured in the videos. The *Getz* factors did not need to be reviewed before admitting the videos.").
[85] *Id.* at 778.
[86] *Phillips,* 154 A.3d at 1157.

19. Lastly, Harris' concerns about the high profile nature of the Mondell homicide can be addressed through careful *voir dire*.[87] The Court finds Harris has not met his burden of demonstrating he would be prejudiced by joinder as his claim of prejudice is merely hypothetical. Harris' Motion to Sever is **DENIED.**

20. **Motion to Compel *Brady* Disclosures.** Harris' last motion seeks to compel the State to produce three categories of *Brady* material related to the August 16, 2022 shooting incident: (1) location information data for a one hour period before the shooting occurred for a Jeep Wrangler involved in the shooting, codefendants Nyair Small and Daeshawn Shields, and himself; (2) evidence bearing on the credibility of witness who claim to have heard Harris make inculpatory statements; and (3) evidence tending to show that two firearms were involved in the shooting and who fired each weapon.[88]

21. With respect to the location data requested by Harris, the State responds that it has provided everything in its possession related to this request.[89] Similarly, the State represents that it has provided and will continue to provide information bearing on the credibility of its witnesses.[90] Finally, the State responds that it has provided all information in its possession bearing on the State's theory that two

[87] The Court notes that the Mondell homicide received considerable media attention, but it also notes that it occurred four years ago.
[88] Def.'s Pretrial Mtns. at ¶¶ 27-30, D.I. 33.
[89] State's Resp. at ¶ 50, D.I. 35.
[90] *Id.* at ¶ 51.

firearms were used in the shooting.[91] But, it objects to Harris' request that it identify who discharged which firearm.[92] It denies that information is *Brady* material, characterizing it as information related to the State's theory of the case and how it intends to present its evidence, which are beyond the scope of the State's disclosure obligations.[93]

22. To the extent the State already has provided the location data for the Jeep Wrangler, codefendants Small and Shields, and Harris, information bearing on the credibility of its witnesses, and information tending to show two firearms were used in the August 16, 2022 shooting, the Motion to Compel *Brady* Disclosures is **DENIED**. The request to compel the State to disclose its theory of who discharged which firearm also is **DENIED**.[94] Harris does not assert that disclosure is required by Criminal Rule 16(b). Rather, he blandly asserts this information may tend to exculpate him when compared to codefendants Shields and Small, but he does not explain why that is so. The three codefendants are each charged in Counts 49 to 76 of the Reindictment related to the August 16 2022 incident, with Count 76 charging them with conspiring to commit Murder First Degree and/or Attempted Murder First Degree in Counts 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, and 74.[95] Certainly, a

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[91] *Id.* at ¶ 52.
[92] *Id.* at ¶ 53.
[93] *Id.,* at ¶ 53, 54.
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[95] *Id.* at Count 49-76.

defendant does not need to actually pull the trigger, nor need he even be present, in order to be guilty of shooting someone as an accomplice.[96] Nor, does it matter which trigger Harris pulled, if he if fact pulled a trigger. Further, a defendant may be charged as a principal and convicted as an accomplice and vice versa.[97] These concepts illustrate that what Harris is seeking is not *Brady* material, but rather the State's theory of the case, something which the State need not disclose, even had Harris sought it through a bill of particulars.[98] Harris' request to identify who discharged each weapon is **DENIED**.

THEREFORE, for the reasons described above, Defendant Phillip C. Harris' Motion to Dismiss, his Motion to Sever Trial of August 16, 2022 Counts from July 29, 2020 Counts, and his Motion to Compel *Brady* Disclosures all are **DENIED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.

[96] *See,* 11 *Del. C.* § 271.
[97] *See,* 11 *Del. C.* § 275.
[98] *See, State v. Goldsborough,* 2000 WL 706790, at *2 (Del. Super. Ct. Feb. 10, 2000).