IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN MILLER,	§	
	§	
Defendant Below,	§	No. 63, 2026
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware
	§	
STATE OF DELAWARE,	§	Cr. ID No. 1611008842A/B(N)
	§	
Appellee.	§	

Submitted: August 12, 2026
Decided: November 5, 2026

Before **SEITZ**, Chief Justice; **LEGROW** and **GRIFFITHS**, Justices.

Upon appeal from the Superior Court. **AFFIRMED.**

Christopher S. Koyste, Esquire, LAW OFFICE OF CHRISTOPHER S. KOYSTE, LLC, Wilmington, Delaware, *for Defendant Below, Appellant*.

Andrew R. Fletcher, Esquire, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, Delaware, *for Appellee*.

SEITZ, Chief Justice:

In 2020, a Superior Court jury convicted Kevin Miller of Murder First Degree, Possession of a Firearm During the Commission of a Felony, Possession of a Firearm by a Person Prohibited, and Witness Tampering. The court sentenced him to life in prison plus thirty-five years. After we affirmed his convictions on direct appeal,[1] Miller filed a motion for postconviction relief. He alleged ineffectiveness of his trial counsel, a *Brady* violation, cumulative error, and an *Erlinger* claim. The Superior Court denied the motion.[2] We affirm.

I.

A.

On July 17, 2012, Jeremiah McDonald was shot and killed at Heron Court, a cul-de-sac in the Brookmont Farms area of Newark, Delaware. Witnesses told police that the shooter wore "a furry hoodie" and an "animal mask."[3] Warner Wheeler, one of the 911 callers who stood about 200 feet away from where the shooting occurred, told police that he saw Kevin Miller put on a wolf mask, approach and shoot

[1] *Miller v. State*, 270 A.3d 259, 272 (Del. 2022).

[2] *State v. Miller*, 2025 WL 3516348, at *1 (Del. Super. Dec. 8, 2025) [hereinafter Op.]. Unless noted otherwise, we rely on the facts from the Superior Court's post-conviction opinion.

[3] *Id.*

McDonald, and then flee through nearby houses. The initial investigation did not yield an arrest.

In 2016, the New Castle County Cold Case Homicide Squad reopened the investigation and arrested Miller after interviewing several people, including Wheeler. In his 2016 interview, Wheeler told the police that on the day in question, he saw people on the street wearing masks and shooting BB guns as part of a game. He claimed to have seen Miktrell Spriggs, Demarius Bradley, Mercedes Taylor, and "Boo" wearing masks earlier in the day. He also stated that shortly before the shooting, while walking to get a beer, he saw "Boo," Spriggs, and Taylor sitting in a Jeep nearby.[4] After retrieving the beer, he returned to the front step of Tamika Gary's home, from where he saw Miller put on a wolf mask, walk down the road, and shoot McDonald.

Parts of Wheeler's story were contradicted by Taylor, Gary, Spriggs, and Bradley. Taylor's 2013 statement to police revealed that he had been inside a building on Heron Court before the shooting, and not in the Jeep as Wheeler suggested. On the same day as Wheeler's 2016 interview, Gary told police that Wheeler was inside her home at the time – not on the front porch – and that he never mentioned seeing Miller. Spriggs told Stephen Kempski, a private investigator

[4] *Id.* at *2, *8 (referring to Spriggs as "Bell," Bradley as "D-Man," and Taylor as "M7"). The fourth person, "Boo," is not identified.

retained by Miller's postconviction counsel, that he had been living in New Jersey and was not present at the time of the shooting. Spriggs repeated this to police in a 2018 statement. And Bradley confirmed to investigator Kempski that at the time of the shooting, he was in the custody of the Division of Youth Rehabilitative Services ("DYRS").

B.

At trial, the State called McDonald's child's mother, Krystal Bivings, who testified that she and Miller were in a relationship, which caused tension between Miller and McDonald.[5] She also testified that the morning after the shooting, Miller called her claiming that he was in Newark around the time the shooting occurred.

Next, the State planned to call James Watson. In 2013 and 2016 interviews with police, Watson identified Miller as McDonald's killer.[6] But when he arrived at court, Watson initially refused to testify for personal safety reasons if anyone from Brookmont Farms was in the gallery. The State anticipated that even if it convinced Watson to testify, he would deny knowledge of his prior statements concerning the identity of the shooter.

As a backup, the State sought to introduce Watson's 2016 interview under 11 *Del. C.* § 3507. The statute permits admission of a "voluntary out-of-court prior

[5] *Id.* at *2.

[6] *Id.* at *3.

statement of a witness who is present and subject to cross-examination." The prosecutor stated that the State was only planning to play a recording of the 2016 statement.[7] Having lost a similar objection in a prior case and believing the same objection here would likely be futile, Miller's trial counsel asked that the State also read the 2013 statement into the record.[8] The State agreed.[9]

Watson ultimately took the stand, but as the State predicted, he denied any knowledge of the shooter's identity and stated that he could not recall the substance of his prior statements to police. After laying an evidentiary foundation, the State called the detective who conducted Watson's 2016 interview and played an audio recording of the interview.[10] When Watson returned to the stand and stated that the 2016 statement had not jogged his memory about his 2013 statement, the detective was recalled and the State had him read a transcript of the 2013 statement.[11]

In his 2016 statement, Watson identified Miller as the shooter, stating that "[Miller] had the mask on," and that he was so sure, he "would bet [his] kids on it."[12]

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[7] App. to Opening Br. at A353 [hereinafter A_] (Trial Tr.).

[8] *Id.*

[9] *Id.*

[10] A355–56.

[11] A357.

[12] *See* A827–28.

But his 2013 statement, made during the initial investigation, was more equivocal. In that statement, Watson stated that although Miller was "the first person that popped in his mind" due to his mannerisms, "it might not have been him."[13]

The State also called Michael Mude, who testified that Miller had asked about McDonald's whereabouts shortly before the shooting. Mude also claimed that after the killing, Miller told Mude that the people "that seen me do it know better than to say my name, and the people that know I did it ain't going to say s**t"; that Miller said he had attended McDonald's funeral to "keep[] up appearances"; and that he threatened Mude by saying he knew where Mude's mother lived and that Mude could "end up just like" McDonald.[14] On cross-examination, Mude testified that he had initially sought a *quid pro quo* when speaking to law enforcement in 2014, but ultimately received none.[15]

After Mude left the stand, the State called Wheeler. Wheeler testified about his 2016 statement, in which he claimed that he saw Miller shoot McDonald. He also testified about Miller's witness tampering. Wheeler claimed that he had given false statements to Miller's attorney "to help [Miller] out" and that he and Miller

[13] A363.

[14] A447.

[15] A448.

spoke on the phone "in code" and exchanged letters so that Miller could provide instructions for his testimony.[16]

The State wanted to call Anthony Pruitt as a witness. Pruitt, however, called the police and said that he refused to testify because he had been threatened. The court admitted Pruitt's pretrial statement as a "forfeiture by wrongdoing" after the court found that Miller wrongfully caused Pruitt's unavailability.[17] In his statement to police, Pruitt stated that Miller told him to tell McDonald that "Halloween is coming early."[18]

Miller called several witnesses. One witness, the mother of one of Miller's children, testified that Miller told her he was "in Smyrna with [his] wife" at the time of the killing.[19] She also testified that she called Miller on his landline in Frenchtown Woods the night of the murder. During cross-examination, however, the State played a prison call where she said that she had called Miller on his cellphone.[20] Defense counsel also called a prison acquaintance of Miller and Wheeler. He testified that Wheeler admitted telling Miller's attorney that Miller was not at Heron Court at the

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[16] A533–A538.

[17] A643.

[18] A644.

[19] A716.

[20] *Id.*

time of the shooting.[21] Finally, defense counsel called private investigator William Browne to highlight the distance separating Wheeler and Miller at the time of the shooting.[22]

C.

The jury convicted Miller of first-degree murder, possession of a firearm during the commission of a felony, and witness tampering. In a bench trial following the verdict, the Superior Court found Miller guilty of the severed charge of possession of a firearm by a person prohibited.[23] The State moved to declare Miller an habitual offender under 11 *Del. C.* § 4214(a).[24] The Superior Court granted the motion and sentenced Miller to life plus thirty-five years in prison.[25] We affirmed Miller's convictions on direct appeal.[26]

D.

In April 2020, investigator Browne interviewed Gary. She contradicted her previous statement to police. Gary now claimed that Wheeler had falsely accused

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[21] *See* A767–78.

[22] A720.

[23] A20, A37 (Super. Ct. Dkts).

[24] A912 (Habitual Offender Mot.).

[25] A1027–28 (Sentence Order).

[26] *Miller*, 270 A.3d at 272.

Miller because Wheeler owed Miller $20,000, and Wheeler believed that Gary and Miller were in a relationship. Further, rather than Wheeler being in Gary's home, as she had initially claimed, Gary said that she believed Wheeler was at his home between 10:00 P.M. and 11:00 P.M. According to Gary, Wheeler's probation officer conducted visits at that time. She also stated that Wheeler did not arrive at her home until shortly after 11:00 P.M. Finally, she claimed that Wheeler told her that he was in his house at the time of the shooting.

In April 2022, Miller filed a motion for postconviction relief and requested appointment of counsel. The Superior Court granted the request. Postconviction counsel hired investigator Kempski. Kempski took photos of the crime scene and measured the distance from the driveway of Gary's home to where Wheeler said he saw Miller don the wolf mask. The investigator also interviewed Spriggs, Bradley, and Gary. Each of them repeated what they had previously told law enforcement or investigator Browne. Postconviction counsel also retained an expert to review whether, given the weather conditions, lighting, and distance from the shooting, Wheeler could have seen the perpetrator's face well enough to identify them. That expert concluded that the evidence she examined suggested that Wheeler could not have seen the shooter's face.[27]

[27] A1041 (Dr. Suzanne Mannes Expert Report on the Reliability of Eyewitnesses).

In his motion, Miller argued that trial counsel was ineffective for failing to (1) present impeachment evidence countering Wheeler's identification of Miller; (2) call an expert witness to refute Wheeler's identification of Miller; and (3) object at trial to Watson's 2013 pretrial statement as inadmissible hearsay. Miller also claimed that the State violated *Brady* by failing to disclose evidence crucial to Wheeler's impeachment – Bradley's custody status at the time of the shooting. Finally, Miller argued that the above violations amount to cumulative error that deprived him of a fair trial.

In a supplemental motion, Miller added a sixth claim for postconviction relief. Relying on *Erlinger v. United States*,[28] Miller argued that the enhancement of his sentence for possession of a firearm during the commission of a felony violated his constitutional rights because the sentencing judge, rather than a jury, found that his three prior felony convictions were separate and successive, and occurred prior to McDonald's murder.[29] Miller contended that those findings went beyond "the mere fact of the conviction," so *Erlinger* required that a jury find them "by proof beyond a reasonable doubt."[30] Miller also argued that an evidentiary hearing was needed to "comply with due process under [the] Fourteenth Amendment to the United States

[28] 602 U.S. 821 (2024).

[29] A1340, A1376 (Pet'r's Suppl. Mot. for Postconviction Relief).

[30] A1378.

Constitution and Article I, § 7 of the Delaware Constitution . . . so that Mr. Miller has a meaningful opportunity to present witnesses and evidence."[31] In his reply brief, Miller declared that he intended to "file a motion for an evidentiary hearing shortly after the filing of [his] reply."[32] His postconviction counsel had not filed that motion when, twenty-four days after receiving the reply brief, the court denied Miller's motion for postconviction relief.

E.

First, the court held that Miller's trial counsel was not ineffective for failing to call other witnesses to undermine Wheeler's testimony. According to the court, judicial "[r]eview of counsel's representation is subject to a strong presumption that the representation was professionally reasonable," and where trial counsel's approach was deliberate and strategic, it "should not be second-guessed" in light of the witnesses' undermined credibility.[33] The court found that trial counsel's witness-credibility judgments were reasonable, defeating the ineffectiveness claim.

Next, the court was unconvinced that trial counsel should have called an expert witness to refute how Wheeler identified Miller. Trial counsel's affidavit stated that he did not do so because there was "no value in calling an expert witness"

[31] A1585 (Mot. to Schedule Evidentiary Hr'g).

[32] A1519 (Pet'r's Reply Br. to the State's Answers to the Am. Mots. for Postconviction Relief).

[33] Op. at *9 (quoting *Flamer v. State*, 585 A.2d 736, 753 (Del. 1995)).

on the topic, and that he cross-examined Wheeler on "lighting, distance, and potential obstructions."[34] The Superior Court agreed, "find[ing] that it was not ineffective assistance of trial counsel to not call an expert to merely state the obvious, that it is more challenging to see at night from a distance."[35]

Third, the court found that trial counsel was not ineffective for failing to object to Watson's 2013 pretrial statement. It held that referring to others in a statement, without relaying what they said, is not hearsay; that Watson had sufficient personal knowledge about Miller and his mannerisms to satisfy Delaware Rule of Evidence 602; and that even if trial counsel had objected, it would not have changed the outcome, because Watson's identification of Miller was also based on other testimony.[36]

The court also held that the State did not violate *Brady* by failing to disclose records showing that Bradley had been in DYRS custody during the shooting, and that in any event, the *Brady* claim was procedurally barred because it was not asserted on direct appeal.[37] The court explained that because DYRS is separate from

[34] *Id.* at *10; *see also* A1248 (Trial Counsel's Aff.).

[35] Op. at *10.

[36] *See id.* at *10–12.

[37] *Id.* at *12–14 (analyzing Miller's claim under *Brady v. Maryland*, 373 U.S. 83 (1963) and Del. Super. Ct. Crim. R. P. 61(i)(3)).

the Department of Justice (*i.e.*, "the State"), it is not part of the "prosecution team," so the State had no obligation to search its records.[38] The court also reasoned that Bradley could only have impeached Wheeler on incidental details insufficient to overcome other overwhelming evidence of guilt, such as the testimony and statements given by Watson, Pruitt, and Mude.

Finally, the court denied Miller's claim under *Erlinger v. United States*. In *Erlinger*, the U.S. Supreme Court held that the Fifth and Sixth Amendments ordinarily require a jury to find beyond a reasonable doubt whether a defendant's prior offenses were committed on separate occasions when that finding would increase the defendant's exposure to punishment.[39] The Supreme Court clarified that the narrow exception under *Almendarez-Torres v. United States*[40] allowing a judge to determine "the fact of a prior conviction" extends only to "what crime, [and] what elements, the defendant was convicted of[,]" and "no more."[41]

The Superior Court held that because Miller's first-degree murder conviction required a life sentence without the possibility of probation or parole, Miller's claim

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[38] *Id.* at *13 (citing *United States v. Pelullo*, 399 F.3d 197, 218 (3d. Cir. 2005), to assert that even if different "Divisions of the Attorney General's Office . . . share labor and resources, the proper inquiry is whether there were shared labor and resources pertaining to the investigation at hand").

[39] *See* 602 U.S. at 834–35.

[40] 523 U.S. 224, 140 (1998).

[41] *Erlinger*, 602 U.S. at 837–38 (first quoting *Alleyne v. United States*, 570 U.S. 99, 111 (2013); and then quoting *Mathis v. United States*, 579 U.S. 500, 511–12 (2016)).

raised no actual controversy under *Erlinger*.[42] Finally, with no viable claims, the court denied Miller's cumulative error argument.[43]

F.

On appeal, Miller renews some of the same arguments. Miller argues that the Superior Court erred by (1) violating his right to due process when it denied his request to expand the factual record through an evidentiary hearing; (2) rejecting his claim that trial counsel was ineffective for failing to call an identification expert, because an expert would have testified to more than "the obvious"; (3) finding his *Brady* claim procedurally barred and meritless, because he showed cause for procedural default and that the prosecution's failure to disclose favorable impeachment evidence prejudiced him; (4) denying his ineffective assistance of counsel claim because Watson's 2013 statement contained inadmissible hearsay; (5) rejecting his cumulative error claim, because each error was meritorious and together they denied him a fair trial; and (6) finding his *Erlinger* claim did not raise an actual controversy, because he could serve his enhanced PFDCF sentence prior to serving his life sentence.[44]

[42] Op. at *15.

[43] *Id.*

[44] Opening Br. 3–4.

We review the Superior Court's denial of a motion for postconviction relief to determine if it exceeded its discretion, "although we review legal or constitutional questions *de novo.*"[45] We review the Superior Court's decision to deny an evidentiary hearing in postconviction proceedings under the same dual standard – to determine whether it exceeded its discretion, but resolving constitutional or legal claims *de novo*.[46]

II.

A.

First, we address Miller's argument that the Superior Court violated his due process rights by denying him the opportunity to expand the record through an evidentiary hearing. Superior Court Rule of Criminal Procedure 61(h)(1) provides: "After considering the motion for postconviction relief, the State's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable."[47]

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[45] *Reed v. State*, 346 A.3d 1127, 2024 WL 4457496, at *1 (Del. 2024) (TABLE), *cert. denied*, 145 S. Ct. 2714 (2025), *reh'g denied*, 146 S. Ct. 70 (2025).

[46] *Moody v. State*, 195 A.3d 17, 2018 WL 4676706, at *1, *4 (Del. 2018) (TABLE) ("Questions of law are reviewed *de novo* . . . . Grants or denials of evidentiary hearings are reviewed for an abuse of discretion." (first citing *Neal v. State,* 80 A.3d 935, 941 (Del. 2013); and then citing *Rodriguez v. State*, 109 A.3d 1075, 1081 (Del. 2015))).

[47] Del. Super. Ct. Crim. R. P. 61(h)(1) (citation modified).

We have held that "the Superior Court [has] broad discretion to determine the need for an evidentiary hearing."[48]

Miller requested the hearing to expand the record on his first ineffectiveness claim – trial counsel's failure to call witnesses to impeach Wheeler.[49] The court denied the ineffectiveness claim – and by extension, the request for an evidentiary hearing – because, even after it "examined the record and findings of Miller's postconviction investigation," it found that trial counsel "made strategic decisions" not to deploy that evidence, and that the weight of the evidence was insufficient "to [otherwise] demonstrate that trial counsel's decisions were ineffective" under *Strickland v. Washington*.[50]

Miller argues that depriving him of an evidentiary hearing violated his rights because the Superior Court could not, based on the existing record, determine "the credibility of the impeachment evidence."[51] He relies on our decision in *Reed v.*

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[48] *Owens v. State*, 301 A.3d 580, 590 (Del. 2023) (citing *Swan v. State*, 248 A.3d 839, 884 (Del. 2021), *abrogated on other grounds*, *Willis v. State*, 302 A.3d 417 (Del. 2023)) (rejecting claim that "the court abused its discretion by not holding an evidentiary hearing to resolve the competing factual narratives").

[49] A1519 (Pet'r's Reply Br. to the State's Answers to the Am. Mots. for Postconviction Relief). In the Superior Court, Miller also sought the evidentiary hearing as to his *Brady* claim. But on appeal, he asserts only that "an evidentiary hearing was . . . needed to rule on Miller's ineffective assistance of counsel claim." Opening Br. 12.

[50] *Miller v. State*, No. 1611008842A/B, slip op. at 4 (Del. Super. Jan. 20, 2026); 466 U.S. 668 (1984).

[51] Opening Br. 20 (citation modified).

State, where, according to Miller, we held that "under Delaware law, if there are material facts that need to be resolved after briefing and/or 'a credibility finding' needs to be made, the Superior Court must hold an evidentiary hearing."[52] But this overstates *Reed*'s holding.

Reed, who sought postconviction relief, alleged that he pleaded guilty after his trial counsel "told him that he would be convicted irrespective of his guilt because of his race."[53] Trial counsel's affidavit did not explicitly deny making the remark, but the court read in and credited a denial regardless. We remanded for an evidentiary hearing because we could not "fully evaluate Reed's ineffectiveness [sic] assistance of counsel claim" without knowing whether that advice was given.[54]

The record in *Reed* was undeveloped on the crucial question. Here, by contrast, the court had an adequate record to rule on the ineffectiveness claim. In his affidavit, trial counsel explained that he chose not to call Gary due to her inconsistent stories and her admitted lies to police.[55] He explained that Spriggs and Bradley "offered . . . nothing favorable to the defense" because "they did not see

[52] Opening Br. 13–14 (quoting *Reed*, 258 A.3d at 825).

[53] *Reed*, 258 A.3d at 825.

[54] *Id.* at 826.

[55] A1246–47 (Trial Counsel's Aff. in Response to Mot. for Postconviction Relief).

anything . . . helpful," "did not want to get involved," and could have impeached Wheeler only on minor details.[56]

Miller also argues that because investigator Kempski's report contradicted trial counsel's affidavit, a hearing was needed to weigh credibility and resolve these conflicting accounts. But a court does not "abuse[] its discretion by not holding an evidentiary hearing to resolve [] competing factual narratives."[57]

Finally, Miller contends that "[d]ue process . . . requires that a petitioner be given the opportunity to develop critical facts relevant to their postconviction arguments."[58] But Miller had that opportunity. He submitted investigator Kempski's report, which trial counsel responded to by affidavit. After reviewing these materials, the court concluded no evidentiary hearing was needed because even if Miller expanded the record to include his proposed new evidence, he could not show that trial counsel was ineffective. Miller's due process rights were not violated.[59]

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[56] A1244.

[57] *Owens*, 301 A.3d at 590.

[58] Opening Br. 11 (citing *Dist. Att'y's Off. for the Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009), which held that *Brady* does not apply in postconviction relief context and that Alaska's postconviction relief procedure, which denied petitioner access to biological evidence for DNA testing, did not violate his due process rights).

[59] Under *Osborne*, postconviction proceedings require less due process than trial. As the Court held, the only "question is whether . . . [a] postconviction relief [procedure] 'offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgresses any recognized principle of fundamental fairness in operation.'"

B.

Miller's ineffective assistance claims are governed by *Strickland v. Washington*.[60] Under *Strickland*, to establish ineffectiveness, Miller "must first show that his 'counsel's representation fell below an objective standard of reasonableness.' If he is successful there, he must also then show that the deficiency was prejudicial to his defense."[61] Each prong under *Strickland* poses its own "arduous standard."[62] The performance prong is met only "if no competent attorney would have chosen the challenged course of action."[63] "Where 'an attorney makes a strategic choice after thorough investigation of law and facts relevant to plausible options,' the presumption that an attorney acted reasonably is 'virtually unchallengeable.'"[64] To meet the prejudice prong, "a defendant 'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'"[65]

Osborne, 557 U.S. at 69 (quoting *Medina v. California*, 505 U.S. 437, 446, 448 (1992)). Here, no such transgression occurred.

[60] 466 U.S. at 687.

[61] *Cooke v. State*, 338 A.3d 418, 455 (Del. 2025) (quoting *Strickland*, 466 U.S. at 687–88).

[62] *Id.*

[63] *Id.* (quoting *Green v. State*, 238 A.3d 160, 178 (Del. 2020)).

[64] *Id.* (quoting *Purnell v. State*, 106 A.3d 337, 342 (Del. 2014)).

[65] *Id.* (quoting *Starling v. State*, 130 A.3d 316, 325 (Del. 2015)).

1.

Miller argues that the Superior Court erred by not finding trial counsel ineffective for failing to call an expert identification witness to impeach Wheeler. He claims "that an identification expert would have testified to matters beyond 'that it is difficult to see in the dark and at distances.'"[66] He also contends that an "expert would have testified in relation to the science and research that render it incredibly difficult to identify someone even when there is familiarity."[67] But, as the Superior Court held, trial counsel is not ineffective for believing that a lay juror does not need "science and research" to know that "it [is] incredibly difficult to identify someone" from 200 feet away at night, "even when there is familiarity."[68] Trial counsel made the jury aware of these difficulties and competently cross-examined Wheeler on the issue.

[66] Opening Br. 25 (quoting Op. at *10).

[67] *Id.*

[68] *Id.* *See Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (the "strategic decisions of trial counsel – including whether to hire an expert – are entitled to a 'strong presumption' of reasonableness" (quoting *Harrington v. Richter*, 562 U.S. 86, 104 (2011))); *see also State v. Worley*, 2016 WL 908913, at *4 (Del. Super. Mar. 9, 2016) (it was a "reasonable tactical decision" for trial counsel to forego presenting the testimony of an expert witness regarding witnesses' identification of the defendant, especially where trial counsel cross-examined those witnesses as to the reliability of their identifications).

2.

Miller also claims that trial counsel should have objected to the admission of Watson's 2013 statement.[69] Rather than challenging the general basis for admitting the statement under 11 *Del. C.* § 3507, he claims that the statement is inadmissible because it contains double hearsay. The statement reads: "After a while down the line, and me and my peoples were talkin', I'm like 'yo, I'm like 'yo the first person that popped in my mind [as the assailant] was" Miller.[70] Miller argues that the reference to "peoples" created a second layer of hearsay not protected by Section 3507.

Whether the statement is double hearsay is of no moment. Trial counsel did not fail to object to the 2013 statement – rather, he wanted the jury to hear the statement.[71] After the State signaled that it was going to introduce Watson's 2016 statement, trial counsel noted that he believed he could not object to that statement because he had lost on a similar issue in a prior case. The following exchange between counsel then occurred:

[Defense]: Are you going to play both statements?

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[69] Opening Br. 38.

[70] A359–60 (Trial Tr.).

[71] A353.

> [Prosecution]: I was going to play the [2016] statement because it's shorter. We can play both if you want me to.
>
> [Defense]: Play both of them.[72]

Strickland places a "heavy burden" on the defendant to rebut the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[73] Where "'an attorney makes a strategic choice after thorough investigation of law and facts relevant to plausible options,' the presumption that counsel's conduct was objectively reasonable is 'virtually unchallengeable.'"[74] Here, trial counsel assessed as futile any objection to the 2016 statement and instead chose to ask that the more favorable 2013 statement also be played. Even assuming that the statement was inadmissible, trial counsel's strategic choice to request the 2013 statement was not unreasonable.[75]

C.

Miller argues that the Superior Court erred by denying his *Brady* claim. *Brady v. Maryland* requires that prosecutors turn over any exculpatory material "known to [them or] the other[] [actors] acting on the government's behalf in the case, including

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[72] *Id.*

[73] *Cooke*, 338 A.3d at 455 (quoting *Green*, 238 A.3d at 174).

[74] *Kellam v. State*, 341 A.3d 475 (Del. 2025) (quoting *Cooke*, 338 A.3d at 455).

[75] *Cf. Capano v. State*, 889 A.2d 968, 976 (Del. 2006) (holding that it was a "professionally reasonable decision" for trial counsel to stipulate to unfavorable hearsay testimony from the state in exchange for the introduction of favorable hearsay testimony).

the police."[76] Miller asserts that the State suppressed evidence that Bradley had been in DYRS custody during the shooting. As discussed above, the Superior Court rejected this argument, holding that the claim was procedurally barred because Miller did not raise it on direct appeal, and, in any event, that DYRS played no role in Miller's prosecution, meaning the State had no obligation to search DYRS's records.[77]

Even if Miller's *Brady* claim is not procedurally barred, it fails on the merits. Miller argues that, under *Brady*, the State has a duty to search DYRS records because DYRS is part of the prosecution team.[78] Generally, a government entity is deemed a member of the prosecution for *Brady* purposes if it participated in the investigation or prosecution, or if the prosecution team exercises control over the officials who possess the relevant materials.[79] Here, Miller claims that the State "exercises control over" and shares resources and personnel with DYRS, making them part of the same prosecution team.[80]

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[76] *Youngblood v. West Virginia*, 547 U.S. 867, 870 (2006) (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)).

[77] Op. at *14.

[78] Opening Br. 31–34.

[79] *See Pelullo*, 399 F.3d at 218 (agency is "not a member of the prosecution team" if "[t]here is no indication that the prosecution and [agency] engaged in a joint investigation . . . . []or . . . that the prosecution had any sort of control over the [agency] officials who were collecting documents").

[80] Opening Br. 32–33.

It is true that DYRS "'often works with [DSCYF]' and their 'Civil Division is responsible for providing legal services to the offices, departments, boards, agencies, commissions and instrumentalities of state government.'"[81] But Miller concedes that DYRS was "NOT involved in the direct investigation of Miller."[82] And "prosecutors are not obligated to learn of all information 'possessed by other government agencies that have no involvement in the investigation or prosecution at issue.'"[83] In other words, the State had no duty to review DYRS's records, so no *Brady* violation occurred.

D.

Regarding Miller's cumulative-error claim, we have held that "[w]here there are multiple errors in a trial, this Court weighs their cumulative effect to determine if, combined, they are 'prejudicial to substantial rights [so] as to jeopardize the fairness and integrity of the trial process.'"[84] Here, having found no errors, the argument fails.

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[81] *Id.* (alteration in original) (footnote omitted).

[82] *Id.* at 33.

[83] *United States v. Risha*, 445 F.3d 298, 304 (3d Cir. 2006) (quoting *United States v. Merlino*, 349 F.3d 144, 154 (3d Cir. 2003)).

[84] *Brisco*, 2025 WL 302795, at *9 (second alteration in original) (quoting *Hoskins v. State*, 102 A.3d 724, 735 (Del. 2014)).

E.

Finally, Miller argues that the Superior Court's denial of his *Erlinger* claim as unripe was erroneous because his sentencing records list his ten-year sentence first. Thus, according to Miller, there is "a realistic possibility that Miller will have to serve his habitual offender enhanced sentence for PFDCF prior to having to serve his life sentence for First Degree Murder; and therefore, Miller's *Erlinger* claim was ripe for consideration by the Superior Court."[85]

Assessing whether a claim is ripe "requires a common sense assessment" of whether the "interests of the party seeking immediate relief outweigh the concerns of the court 'in postponing review until the question arises in some more concrete and final form.'"[86] A claim "will be deemed not ripe where the claim is based on 'uncertain and contingent events' that may not occur," or where other events "'obviate the need' for judicial intervention."[87]

As a preliminary matter, Miller's argument is based on a faulty premise. His sentencing order lists his life sentence first.[88] That aside, the order in which Miller's

[85] Opening Br. 48.

[86] *XL Specialty Ins. Co. v. WMI Liquidating Tr.*, 93 A.3d 1208, 1217 (Del. 2014) (quoting *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 480 (Del. 1989)).

[87] *See id.* at 1217–18 (first quoting *Bebchuk v. CA, Inc.*, 902 A.2d 737, 740 (Del. Ch. 2006); then quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 872 A.2d 611, 631–32 (Del. Ch. 2005), *aff'd in relevant part, rev'd in part*, 901 A.2d 106 (Del. 2006)).

[88] A1027 (Sentence Order).

sentences appear in the sentencing records is irrelevant. Where a sentence enhancement has no practical effect on a defendant serving a separate life sentence, a claim challenging the length of that sentence does not present an "actual controversy."[89] Miller will serve a life sentence without the possibility of parole.[90] Thus, the enhancement has no current impact on Miller. His *Erlinger* claim is not ripe for review.[91]

III.

The judgment of the Superior Court is affirmed.

[89] *See State v. Hearne*, 2023 WL 2980324, at *7 (Del. Super. Apr. 17, 2023) (holding that where a defendant was sentenced to seven life sentences, a claim challenging his lesser convictions presented no actual controversy); *Govan v. State*, 832 A.2d 1251, 2003 WL 22227548, at *1 (Del. Sep. 24, 2003) (TABLE) (observing "the issue Govan raises regarding sentences on the weapon offenses does not appear to be ripe for consideration in light of Govan's four life sentences without parole").

[90] *See* 11 *Del. C.* § 4209(a) ("Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person's eighteenth birthday shall be punished by imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction.").

[91] *See Govan*, 2003 WL 22227548, at *1 (when a sentence enhancement has no practical effect on the defendant, "Delaware courts are not required to expend judicial resources to answer questions that have no significant impact").