



IN THE SUPREME COURT OF THE STATE OF DELAWARE

**MICHAEL DEMBY,** )  
 )  
 Defendant – Below, )  
 Appellant, )  
 )  
 v. ) **No. 667, 2013**  
 )  
 **STATE OF DELAWARE,** )  
 )  
 Plaintiff – Below, )  
 Appellee. )

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

**STATE’S ANSWERING BRIEF**

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## NATURE AND STAGE OF THE PROCEEDINGS

On September 4, 2012, the Kent County Grand Jury returned an indictment against, Michael Demby (“Demby”), Dashawn Ayers (“Ayers”), Galen Brooks (“Brooks”) and eleven other individuals.<sup>1</sup> A-1. The charges pertaining to Demby alleged two counts of Drug Dealing, two counts of Aggravated Possession, one count of Racketeering,<sup>2</sup> two counts of Conspiracy Second Degree, one count of Criminal Solicitation Second Degree and one count of Possession of Drug Paraphernalia. A-1. On August 14, 2013, Demby filed a Motion To Suppress Evidence Obtained From Wiretaps which was denied on October 1, 2013.<sup>3</sup> A-3, A-4. Demby also filed a Motion in Limine to exclude the wiretap recordings on October 1, 2013.<sup>4</sup> A-4. The motion was denied that same day. A-4. The case against Demby and Ayers proceeded to a jury trial on October 1, 2013.<sup>5</sup> A-4. On October 9, 2013, Demby was found guilty of one count of Drug Dealing, one count of Aggravated Possession, one count of Conspiracy Second Degree and one count

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<sup>1</sup> *Exhibit A* to State’s Answering Brief.

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

<sup>3</sup> The motion alleged a lack of probable cause in obtaining the wiretap order. A-7-11.

<sup>4</sup> The motion *in limine* alleged a Confrontation Clause violation. A-13-14.

<sup>5</sup> The State elected to try Brooks’ case separately.

of Possession of Drug Paraphernalia and acquitted on the remaining charges.<sup>6</sup> A-4. On October 13, 2013, Demby filed a Motion for Judgment of Acquittal which was denied on November 25, 2013. A-5, A-6. Demby was sentenced on November 25, 2013 to an aggregate of eight years incarceration followed by descending levels of supervision. A103-04. Demby appealed his conviction and sentence. This is the State's answering brief.

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<sup>6</sup> The charges which the jury convicted Demby of all occurred on May 26, 2012. Demby was acquitted of all charges related to June 2, 2012. *Exhibit A* to State's Answering Brief.

## SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court correctly denied Demby's motion *in limine* to exclude wiretap recordings which contained conversations between Demby and his co-conspirators. The Superior Court properly concluded that the wiretap statements were made by co-conspirators. Under Delaware law, co-conspirator statements are admissible under D.R.E. 801(d)(2)(E) and are not testimonial under *Crawford v. Washington*.<sup>7</sup>

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

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<sup>7</sup> 541 U.S. 36 (2004).

## STATEMENT OF FACTS

From May to June 2012, a multi-agency law enforcement team, led by the Delaware State Police, conducted a wiretap investigation into drug sales in Kent County. B-4-5. The main target of the investigation was Galen Brooks (“Brooks”). B-5. Detective Jeremiah Lloyd (“Lloyd”) of the Delaware State Police was the lead investigator. B-5. The team, led by Lloyd, monitored the wiretap and continued their investigation into Brooks’ organization and its activities. B-4-5.

On May 26, 2012, investigators monitoring Brooks’ communications heard a phone conversation between Brooks and Michael Demby (“Demby”) in which Brooks told Demby to go to his (Brooks’) parents’ home located at 106 Red Oak Drive in Dover, Delaware and await further instructions.<sup>8</sup> Police set up surveillance at 106 Red Oak Drive. B-59-60. They observed Demby arrive at that address driving a red Honda. B-60. Demby went inside and called Brooks.<sup>9</sup> During the next phone call, Brooks instructed Demby to prepare a package of cocaine to sell to a person from Capitol Green who would then give Demby

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<sup>8</sup> State’s Trial Exhibit 1 (Call # 64).

<sup>9</sup> State’s Trial Exhibit 1 (Call # 65).



\$2400.<sup>10</sup> According to Brooks, the buyer would be driving a Dodge Caravan which would be parked in the parking lot of a nearby store.<sup>11</sup> Brooks advised Demby to call back for further instructions after he received the money.<sup>12</sup>

The police conducting surveillance at 106 Red Oak Road observed Demby exit the house and place a package in the trunk of the Honda. B-61. Demby and Brooks' brother, James Brooks ("James"), then both got into the Honda and drove away. B-61. Police also established surveillance at the nearby McKee Crossing shopping center. B-13. That surveillance confirmed that there was an individual, who was later identified as Dashawn Ayers ("Ayers"), seated in a Dodge Caravan in the parking lot. B-16. During the police surveillance, officers observed the Honda occupied by Demby and James enter the parking lot and park next to the Caravan. B-19. Demby got out of the Honda and immediately entered the Caravan while James went into a store in the shopping center. B-18. Demby remained in the Caravan for a brief time and eventually exited the car and went into the store. B-17-18. Shortly thereafter, Demby and James exited the store and got into the Honda and drove away. B-15. Ayers, driving the Caravan, also drove away. B-15. One of the surveillance units followed Ayers and instructed Cpl.

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<sup>10</sup> State's Trial Exhibit 1 (Call # 67).

<sup>11</sup> State's Trial Exhibit 1 (Call # 67).

<sup>12</sup> State's Trial Exhibit 1 (Call # 67).

Timothy Valeski (“Valeski”) of the Delaware State Police to conduct a traffic stop of the Caravan using his unmarked police car. B-65. Valeski stopped the Caravan, and Ayers produced his license (leaving it with Valeski). B-62. When Valeski told Ayers to exit the car, Ayers put the car in gear and fled. B-63-64. Valeski was instructed not to get involved in a vehicle chase given the time of day and the possibility of injuring civilians. B-66-67. The police did not have an opportunity to search the Caravan before Ayers fled. B-14.

Demby called Brooks after the meeting at the shopping center and told him that everything went well and that he had the money.<sup>13</sup> Brooks then instructed Demby to take \$100 for his participation and to bring the remaining \$2300 to Brooks’ mother, Valorie Brooks.<sup>14</sup> Moments later, Valorie Brooks called Brooks and told him that she received \$2300.<sup>15</sup> Brooks told his mother to keep \$50 for herself.<sup>16</sup>

On June 2, 2012, police monitoring the wiretap heard a conversation in which Brooks agreed to provide one ounce of cocaine Demby “for a good deal.”<sup>17</sup>

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<sup>13</sup> State’s Trial Exhibit 1 (Call # 71).

<sup>14</sup> State’s Trial Exhibit 1 (Call # 71).

<sup>15</sup> State’s Trial Exhibit 1 (Call # 72).

<sup>16</sup> State’s Trial Exhibit 1 (Call # 72).

<sup>17</sup> State’s Trial Exhibit 3 (Call # 541).

Police later observed an exchange of money between Brooks and Demby. B-69.

On June 14, 2012, Demby was arrested by the Delaware State Police. B-68, 70-72.

Demby's charges related to both the May 26, 2012 and June 2, 2012 transactions.<sup>18</sup>

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<sup>18</sup> Demby was acquitted of all charges related to the June 2, 2012 transaction.

## ARGUMENT

**I. THE TRIAL JUDGE PROPERLY DETERMINED THAT DEMBY, BROOKS AND VALORIE BROOKS' WIRETAP CONVERSATIONS WERE ADMISSIBLE AS CO-CONSPIRATOR STATEMENTS UNDER D.R.E. 801(d)(2)(E). ADMISSION OF THE WIRETAP STATEMENTS DID NOT VIOLATE THE RULE ANNOUNCED BY THE UNITED STATES SUPREME COURT IN *CRAWFORD V. WASHINGTON*.<sup>19</sup>**

### Question Presented

Whether the Superior Court erred by permitting the wiretap conversations of Demby, Brooks and Valorie Brooks to be introduced into evidence.

### Standard and Scope of Review

A trial judge's evidentiary rulings are reviewed by this Court for an abuse of discretion.<sup>20</sup> "To the extent that the ruling pertains to an alleged constitutional violation, [this Court's review is] *de novo*."<sup>21</sup>

### Merits of the Argument

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

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<sup>19</sup> 541 U.S. 36 (2004).

<sup>20</sup> *Cooney-Koss v. Barlow*, --- A.3d ---, 2014 WL 972213, at \*4 (Del. Mar. 7, 2014).

<sup>21</sup> *Jones v. State*, 940 A.2d 1, 9-10 (Del. 2007). See *Wescott v. State*, 2009 WL 3282707, at \*5 (Del. Oct. 13, 2009) (citing *Norman v. State*, 976 A.2d 843,857 (Del. 2009); *Weber v. State*, 971 A.2d 135, 141 (Del. 2009); *Capano v. State*, 781 A.2d 556, 607 (Del. 2001)).

phone calls made on May 26, 2012.<sup>22</sup> The phone calls captured conversations between Demby and Brooks as well as conversations between Brooks and his mother, Valorie Brooks.<sup>23</sup> The State called Special Agent Jeffrey Dunn (“Dunn”) of the Drug Enforcement Administration as an expert in drug investigations who testified that, based on his training and experience and his review of the recordings, Brooks and Demby were discussing a drug deal that involved the sale of cocaine.<sup>24</sup> The phone calls revealed that (1) Brooks agreed to sell cocaine to Ayers for \$2400; (2) Brooks instructed Demby to “cut” and package the cocaine for sale to Ayers; (3) Brooks instructed Demby to deliver the cocaine to Ayers at a nearby parking lot and collect the money; and (4) Brooks instructed Demby and Valorie Brooks what to do with the proceeds from the sale of the cocaine.<sup>25</sup>

On appeal, Demby first argues that the trial judge failed to follow the “proper procedure”<sup>26</sup> when he admitted the wiretap conversations into evidence

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<sup>22</sup> B-6-12. State’s Trial Exhibit 1.

<sup>23</sup> B-9. State’s Trial Exhibit 1.

<sup>24</sup> B-20-58. Dunn testified that drug deal involved 56 grams of cocaine which would be “cut” with 3 ounces of a cutting agent and sold for \$2400. B-29-31. Dunn made this determination based on the terminology used by Brooks and Demby and the prevailing price of cocaine. B-33.

<sup>25</sup> State’s Trial Exhibit 1.

<sup>26</sup> *Op. Brf.* at 10. Demby appears to have incorporated into his argument, statements made during the course of the June 2, 2012 transaction. *Op. Brf.* at 8, 13. Because Demby was acquitted of those charges, this Court need not consider those statements.

under D.R.E. 801(d)(2)(E) which provides that statements made in furtherance of a conspiracy are admissible against a criminal defendant at trial when:

The statement is offered against a party and is . . . (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy; provided that the conspiracy has first been established by preponderance of the evidence to the satisfaction of the court.<sup>27</sup>

In support of his position, Demby cites to a four-part procedure implemented by United States Court of Appeals for the First Circuit which provides:

A district court faced with a challenge to the admission of a co-conspirator's statement must provisionally admit the statement and then wait until the end of the trial to consider whether, in light of all the evidence, the following four conditions are satisfied by a preponderance of the evidence: (1) a conspiracy existed; (2) the defendant was a member of the conspiracy; (3) the declarant was also a member of the conspiracy; and (4) the declarant's statement was made in furtherance of the conspiracy.<sup>28</sup>

Demby misapprehends the analysis of the admissibility of co-conspirator statements under Delaware law. This Court has considered and rejected a similar argument advanced by Demby. In *Harris v. State*, the State introduced the statements of two co-conspirators which both implicated Harris.<sup>29</sup> The defense

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<sup>27</sup> D.R.E. 801(d)(2)(E). See *Jones*, 940 A.2d at 11.

<sup>28</sup> *United States v. Diaz*, 670 F.3d 332, 348 (1st Cir. 2012) (citing *United States v. Vázquez-Botet*, 532 F.3d 37, 65 (1st Cir. 2008); *United States v. Petrozziello*, 548 F.2d 20, 23 (1st Cir. 1977)).

<sup>29</sup> 695 A.2d 34 (Del. 1997).

objected to both statements on hearsay grounds.<sup>30</sup> The trial judge determined that the statements were admissible under D.R.E. 801(d)(2)(E) as co-conspirator statements.<sup>31</sup> On appeal, Harris argued that the statements should not have been admitted into evidence because the trial judge failed to determine that a conspiracy existed.<sup>32</sup> Rejecting Harris’ argument, the Court stated “[e]ven if the trial court had enunciated an incomplete standard or failed to articulate all three elements of the co-conspirator exception, the record indicates that the trial court did not abuse its discretion in its evidentiary ruling.”<sup>33</sup> The Court held that a statement may qualify as an exception to the hearsay rule if the offering party can demonstrate that “1) a conspiracy existed; 2) the co-conspirator and the defendant against whom the statement is offered were members of the conspiracy; and 3) the statement was made during and to further the conspiracy.”<sup>34</sup>

Here, Demby argues that the trial judge “failed to make specific determinations concerning the four conditions [as outlined by the First Circuit] for

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<sup>30</sup> *Harris*, 695 A.2d at 42.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

each declarant's statement."<sup>35</sup> During a hearing outside the presence of the jury, the trial judge considered Demby's motion *in limine* and discussed D.R.E. 801(d)(2)(E) stating "[t]he rule provides with regard to conspirator's statements provided that the conspiracy has first been established by the preponderance of the evidence to the satisfaction."<sup>36</sup> At the conclusion of the hearing, the trial judge made the following determination:

Under the rule, the conspiracy must be established by a preponderance of the evidence to the satisfaction of the Court. Preponderance meaning more likely than not has to be satisfied to my – satisfied to my satisfaction and I am satisfied that a conspiracy has been established by a preponderance of the evidence.<sup>37</sup>

The evidence adduced at the hearing (and at trial) established by a preponderance that (1) there was a conspiracy (2) Brooks, Demby, Ayers and Valorie Brooks were all members of the conspiracy and (3) the statements on the wiretap were made in furtherance of the conspiracy (including those of Valorie Brooks<sup>38</sup>). The trial

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<sup>35</sup> *Op. Brf.* at 12.

<sup>36</sup> A-25. Demby objected to having a hearing outside the presence of the jury for purpose of allowing the trial judge to make the very determinations regarding the foundation of the co-conspirator statements which he now argues the trial judge failed to make. B-1-2.

<sup>37</sup> A-63. The trial judge also found that the conspiracy continued until the proceeds of the sale of cocaine to Ayers were delivered to Valorie Brooks, thus making the conversations between Galen Brooks and Valorie Brooks admissible under D.R.E. 801(d)(2)(E). B-3.

<sup>38</sup> *See Hackett v. State*, 1999 WL 624108, at \*3 (Del. July 16, 1999) ("statements made after [a] robbery but before the proceeds were divided are made 'in furtherance of [a] conspiracy.'" *Id.* (quoting *Williams v. State*, 494 A.2d 1237, 1242 (Del. 1985)).



judge properly concluded that the wiretap statements were admissible under D.R.E. 801(d)(2)(E).

Demby next argues that the admission of the wiretap statements into evidence deprived him of the ability to cross examine the individuals heard on the wiretap thus violating the United States Supreme Court holding in *Crawford v. Washington*.<sup>39</sup> While Demby correctly states that *Crawford* requires “testimonial hearsay be subject to cross examination” under the Confrontation Clause, he does not argue that the wiretap statements are testimonial.<sup>40</sup> He instead argues that because the State called a witness to “translate” the conversations on the wiretap he should have been able to cross examine Brooks and Valorie Brooks.<sup>41</sup> Demby confuses the analysis of co-conspirator statements under *Crawford*.

In *Jones v. State*, this Court held that co-conspirator statements made in furtherance of a conspiracy are admissible under the Delaware Rules of

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<sup>39</sup> *Op. Brf.* at 8.

<sup>40</sup> *Op. Brf.* at 14.

<sup>41</sup> *Op. Brf.* at 14. At trial, Demby objected to the expert testimony of DEA Special Agent Jeffrey Dunn, who interpreted the wiretap conversations between Brooks and Demby. B-74. Demby joined in arguments made by Ayers that the interpretation of the conversation between Brooks and Demby was not the proper subject of expert testimony and additionally claimed that the State committed a discovery violation by failing to disclose the specific substance of his proposed testimony. B-76-77. The trial judge found that the State had fulfilled its discovery obligation under Superior Court Criminal Rule 16 and that Dunn’s interpretation of the conversations on the wiretap was a “legitimate subject for expert testimony.” B-80-81.

Evidence.<sup>42</sup> However, their admissibility does not preclude a separate analysis under the Sixth Amendment of the U.S. Constitution.<sup>43</sup> Jones argued that the United States Supreme Court holding in *Crawford* precluded admission of co-conspirator statements at his trial, claiming that the statements were testimonial and violated his rights under the Confrontation Clause.<sup>44</sup> The *Jones* court rejected that argument and found that the co-conspirator statements were not testimonial under *Davis v. Washington*<sup>45</sup> and did not implicate the Sixth Amendment.<sup>46</sup> As the Court explained:

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

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<sup>42</sup> *Jones*, 940 A.2d at 11.

<sup>43</sup> *Id.*

<sup>44</sup> *Jones*, 940 A.2d. at 12. In *Crawford*, The United States Supreme Court held that the Confrontation Clause bars the “admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” 541 U.S. at 53-54.

<sup>45</sup> 547 U.S. 813, 822 (2006).

<sup>46</sup> *Jones*, 940 A.2d at 13. In *Davis*, the United States Supreme Court held that “[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” 547 U.S. at 822.

statements could be used against him in subsequent formal proceedings.<sup>47</sup>

The Court noted that *Crawford* “recognize[s] . . . that statements made in the furtherance of a conspiracy are *nontestimonial*.”<sup>48</sup> Here, the wiretapped conversations which were introduced at trial are nontestimonial because they are statements made in furtherance of a conspiracy. Stated differently, the statements are not “‘testimonial’ within the meaning of *Crawford* and *Davis*. . . [and] are subject only to our State’s hearsay rules because they do not implicate the Confrontation Clause.”<sup>49</sup> The Superior Court correctly found that that the wiretap conversations are nontestimonial. Dunn’s testimony does not alter the analysis of Demby’s claim.<sup>50</sup> The wiretap conversations remain nontestimonial their admission did not violate *Crawford*.

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<sup>47</sup> *Jones* at 12-13. See also *Wheeler v. State*, 36 A.3d 310, 318 (Del. 2012) (“a statement is ‘testimonial’ if it is provided during an investigation for the purpose of fact gathering for a future criminal prosecution.” *Id.* (citing *Dixon v. State*, 996 A.2d 1271, 1277–78 (Del. 2010)).

<sup>48</sup> *Jones* at 12-13 (emphasis added).

<sup>49</sup> *Id.* at 13.

<sup>50</sup> See *Hopkins v. State*, 893 A.2d 922, 929 (Del. 2006) (stating “[it is] well settled that the government may elicit expert testimony from a properly qualified expert witness regarding the parlance of the narcotics trade and the meaning thereof [because] drug dealers often camouflage their discussions... [Therefore] expert testimony explaining the meaning of code words may assist the trier of fact to understand the evidence or to determine a fact in issue.” (quoting *United States v. Cruz*, 363 F.3d 187, 194 (2nd Cir. 2004))).

Demby finally contends that admission of the wiretap conversations did not constitute harmless error. “A prejudicial constitutional confrontation violation occurs where the ‘out-of-court statements were not merely cumulative evidence ... [but] likely a principal factor in [the] conviction.’ Where that is not the case, the error is harmless.”<sup>51</sup> In this case, there was no error in admitting the wiretap conversations as they were nontestimonial and offered under a firmly rooted hearsay exception. As a result, this Court need not engage in a harmless error analysis.<sup>52</sup>

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<sup>51</sup> *Wheeler*, 36 A.3d at 321 (quoting *Holmes v. State*, 2010 WL 5043910, at \*5 (Del. Dec. 9, 2010) (other citations omitted)).

<sup>52</sup> *See Jones*, 940 A.2d at 14 n.46 (“[b]ecause we hold that [the witness’s] statements are not testimonial, we need not address a harmless error analysis”).

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

**Question Presented**

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

**Standard And Scope Of Review**

This Court reviews “a claim alleging the denial of a constitutional right *de novo*.”<sup>53</sup>

**Merits Of The Argument**

In 2011, the General Assembly enacted a “comprehensive revision of Delaware’s drug offenses.”<sup>54</sup> Demby was indicted under the revised law. Demby was charged with violating 16 *Del. C.* § 4752(1) (Drug Dealing), because “on or about the 26<sup>th</sup> day of May, 2012, ... [he] did knowingly deliver or possess with intent to deliver 20 grams or more of cocaine any mixture containing cocaine, a

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<sup>53</sup> *Tucker v. State*, 2012 WL 4512900, at \*1 (Del. Oct. 1, 2012) (citing *Norman v. State*, 976 A.2d 843, 857 (Del. 2009)).

<sup>54</sup> 2011 Del. Laws, Ch. 13 (H.B. 19).

controlled substance as described in 16 *Del. C.* § 4716(b)(4)”<sup>55</sup> Demby was also charged with violating 16 *Del. C.* § 4752(3) (Aggravated Possession), because “on or about the 26<sup>th</sup> day of May, 2012, ... [he] did knowingly possess 25 grams or more of cocaine any mixture containing cocaine, a controlled substance as described in 16 *Del. C.* § 4716(b)(4).”<sup>56</sup> The same quantity of cocaine was the factual basis of both charges.

Demby appears to argue that both Aggravated Possession and Drug Dealing require proof of the same elements and that no additional element is needed to prove Aggravated Possession.<sup>57</sup> He is mistaken insofar as § 4752(1) (Drug Dealing) does indeed require proof of an additional element – the intent to deliver.<sup>58</sup> Because each offense requires proof of an element that the other does

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<sup>55</sup> *Exhibit A* to State’s Answering Brief.

<sup>56</sup> *Exhibit A* to State’s Answering Brief.

<sup>57</sup> *Op. Brf.* at 19.

<sup>58</sup> 16 *Del. C.* § 4752 provides:

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

Except as authorized by this chapter, any person who:

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

not, section 4752(3) is not a “lesser included offense” of section 4752(1) that must be merged pursuant to 11 *Del. C.* § 206<sup>59</sup> or *Blockburger v. United States*.<sup>60</sup> However, Chapters 48 & 49 of Title 16 allow, for most drug crimes, a defendant to be charged only with the highest grade of offense applicable to the defendant’s crime with no additional drug dealing, aggravated possession, or simple possession

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(3) Possesses a controlled substance in a Tier 5 quantity;

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

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

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

<sup>59</sup> 11 *Del. C.* § 206(a) provides that a defendant’s conduct may result in a conviction for more than one offense unless “(1) One offense is included in the other, as defined in subsection (b) of this section; or (2) One offense consists only of an attempt to commit the other; or (3) Inconsistent findings of fact are required to establish the commission of the offenses.” 11 *Del. C.* § 206(b) provides: “A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when: (1) It is established by the proof of the same or less than all the facts required to establish the commission of the offense charged; or (2) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or (3) It involves the same result but differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.” (emphasis added).

<sup>60</sup> 284 U.S. 299, 304 (1932) (“The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.”).

charges.<sup>61</sup> While it was entirely appropriate for the State both to have indicted Demby for violating sections 4752(1) and 4752(3) and to have proceeded to trial on both offenses,<sup>62</sup> because the same set of facts and cache of cocaine provide the basis for the two charges, Counts 14 and 17 merge for sentencing purposes. Thus the case should be remanded for the sole purpose of merging Count 14 into Count 17 and resentencing.

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<sup>61</sup> 2011 Del. Reg. Sess. H.B. 19 (Bill Summary). *And cf.* 16 *Del. C.* § 4766(1).

<sup>62</sup> *See Zugehoer v. State*, 980 A.2d 1007, 1013-14 (Del. 2009) (“The State may charge different theories of criminal liability for the same offense in a single indictment.”).



## **CONCLUSION**

For the foregoing reasons the judgment of the Superior Court should be affirmed and the case should be remanded for resentencing, with directions to merge counts 14 and 17 of the indictment.

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

DATE: April 14, 2014

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE STATE OF DELAWARE

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

v.

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

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

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KENT COUNTY  
PROTHONOTARY

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

*ala*

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

COUNT 1

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

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

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

COUNT 2

IK12-07-0256 (G. BROOKS)

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

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

COUNT 3

IK12-09-0080<sup>W</sup> (SCARBOROUGH)

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

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

COUNT 4

IK12-09-0229 (G. BROOKS)  
IK12-09-0080<sup>W</sup> (SCARBOROUGH)

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

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

COUNT 5

IK12-09-0081<sup>W</sup> (SCARBOROUGH)

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

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

COUNT 6

IK12-07-0257 (G. BROOKS)

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

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

COUNT 7

IK12-09-0087<sup>W</sup> (SCARBOROUGH)

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

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

COUNT 8

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

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

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

COUNT 9

IK12-09-0083 W (SCARBOROUGH)

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

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

COUNT 10

I K12-07-0258 (G. BROOKS)

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

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

COUNT 11

I K12-04-0088 W (SCARBOROUGH)

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

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

COUNT 12

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

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

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

COUNT 13

IK12-09-0085W  
(SCARBOROUGH)

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

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

COUNT 14

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

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

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



COUNT 15

I K12-09-0024<sup>W</sup> (AYERS)

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

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

COUNT 16

I K12-09-0025<sup>W</sup> (AYERS)  
I K12-07-0263 (G. BROOKS)  
I K12-09-0028<sup>W</sup> (J. BROOKS)  
I K12-07-0026 (DEMBY)

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

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

COUNT 17

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

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

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

COUNT 18

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

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

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

COUNT 19

I K12-09-211 (BROWN)

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

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

COUNT 20

IK12-06-0541 (BROWN)

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

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

COUNT 21

IK12-09-212 (BROWN)

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

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

COUNT 22

IK12-09-213 (BROWN)

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

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

COUNT 23

I K12-09-214 (BROWN)

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

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

COUNT 24

I K12-09-0215 (BROWN)

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

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

COUNT 25

IK12-07-0246 (G. BROOKS)

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

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

COUNT 26

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

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

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

COUNT 27

IK12-09-0224 (G. BROOKS)

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

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

COUNT 28

IK12-09-0217 (BROWN)

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

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

COUNT 29

IK12-07-0259 (G. BROOKS)

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

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

COUNT 30

IK12-09-0056W (LANDRY)

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

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

COUNT 31

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

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

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

COUNT 32

I K12-09-0046<sup>W</sup> (LANDRY)

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

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

COUNT 33

I K12-07-0260 (G. BROOKS)

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

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

COUNT 34

I K12-09-0039<sup>w</sup> (JAMES)

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

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

COUNT 35

I K12-09-0226 (G. BROOKS)  
I K12-09-0035<sup>w</sup> (JAMES)

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

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



COUNT 36

I K12-09-0036<sup>W</sup> (JAMES)

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

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

COUNT 37

I K12-07-0261 (G. BROOKS)

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

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

COUNT 38

I K12-09-0040<sup>W</sup> (JAMES)

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

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

COUNT 39

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

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

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

COUNT 40

I K12-09-0038 (JAMES)

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

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

COUNT 41

I K12-07-0253 (G. BROOKS)

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

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

COUNT 42

I K12-09-0057<sup>W</sup> (LANDRY)

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

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

COUNT 43

I K12-09-0228 (G. BROOKS)  
I K12-09-0041<sup>W</sup> (LANDRY)

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

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

COUNT 44

I K12-09-0048<sup>W</sup> (LANDRY)

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

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

COUNT 45

I K12-09-0229 (G. BROOKS)  
I K12-09-0049<sup>W</sup> (LANDRY)

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

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

COUNT 46

I K12-07-0254 (G. BROOKS)

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

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

COUNT 47

IK12-09-0058<sup>w</sup>  
(LANDRY)

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

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

COUNT 48

IK12-09-0230 (G. BROOKS)  
IK12-09-0050<sup>w</sup> (LANDRY)

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

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

COUNT 49

I K12-09-0051<sup>w</sup> (LANDRY)

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

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

COUNT 50

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

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

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

COUNT 51

I K12-07-0247 (G. BROOKS)

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

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

COUNT 52

I K12-07-0027 (DEMBY)

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

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

COUNT 53

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

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

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

COUNT 54

I K12-09-0256 (DEMBY)

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

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

COUNT 55

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

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

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

COUNT 56

I K12-09-0234 (G. BROOKS)

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

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

COUNT 57

I K12-06-0638 (PRICE)

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

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



COUNT 58

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

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

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

COUNT 59

IK12-09-0235 (G. BROOKS)

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

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

COUNT 60

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

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

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

COUNT 61

IK12-07-0249 (G. BROOKS)

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

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

COUNT 62

IK12-09-0059<sup>W</sup> (LANDRY)

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

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

COUNT 63

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

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

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

COUNT 64

IK12-09-0054 (LANDRY)  
W

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

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

COUNT 65

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

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

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

COUNT 66

I K12-07-0255 (G. BROOKS)

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

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

COUNT 67

I K12-09-0033 (INGRAM)  
W

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

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

COUNT 68

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

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

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

COUNT 69

IK12-09-0031W (INGRAM)

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

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

COUNT 70

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

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

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

COUNT 71

IK12-07-0250 (G. BROOKS)

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

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

COUNT 72

IK12-09-0071<sup>W</sup> (MATTHEWS)

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

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

COUNT 73

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

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

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

COUNT 74

I K12-09-0063 W (MATTHEWS)

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

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

COUNT 75

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

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

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

COUNT 76

IK12-07-0251 (G. BROOKS)

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

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

COUNT 77

IK12-09-0072<sup>W</sup> (MATTHEWS)

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

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



COUNT 78

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

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

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

COUNT 79

I K12-09-0066 (MATTHEWS)  
W

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

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

COUNT 80

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

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

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

COUNT 81

IK12-07-0252 (G. BROOKS)

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

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

COUNT 82

IK12-09-0073W (MATTHEWS)

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

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

COUNT 83

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

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

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

COUNT 84

IK12-09-0069W (MATTHEWS)

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

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

COUNT 85

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

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

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

COUNT 86

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

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

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

COUNT 87

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

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

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

COUNT 88

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

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

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

COUNT 89

I K12-09-0272 (DOLLARD)

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

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

COUNT 90

I K12-09-0273 (DOLLARD)

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

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

COUNT 91

I K12-09-0274 (DOLLARD)

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

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

COUNT 92

I K12-09-0275 (DOLLARD)

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

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

COUNT 93

I K12-09-0276 (DOLLARD)

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

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

COUNT 94

I K12-09-0277 (DOLLARD)

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

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

COUNT 95

I K12-09-0288 (G. BROOKS)

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

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

COUNT 96

I K12-06-0594 (JACKSON)

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

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

COUNT 97

I K12-06-0595 (JACKSON)

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

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

COUNT 98

I K12-09-0281 (JACKSON)

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

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



COUNT 99

I K12-09-0247 (G. BROOKS)

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

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

A TRUE BILL

Joseph R. Biden, III  
ATTORNEY GENERAL

Nicole S. Hartman  
NICOLE S. HARTMAN  
DEPUTY ATTORNEY GENERAL

Wayne C. Lehman  
(FOREPERSON)

Sam A. Subb  
(SECRETARY)

## CERTIFICATION OF SERVICE

The undersigned certifies that on April 14, 2014, he caused the attached *State's Answering Brief* to be delivered via Lexis/Nexis File and Serve to the following person:

André M. Beauregard, Esq.  
Brown, Shiels & Beauregard, LLC  
502 South State Street  
Dover, DE 19901

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella  
Deputy Attorney General  
ID No. 3549  
Department of Justice  
820 North French Street  
Wilmington, DE 19801  
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