EFiled: Jun 12 2014 02:23PM EDT
Filing ID 55584631
Case Number 380,2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SIRRON BENSON,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 380, 2013
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

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

STATE'S ANSWERING BRIEF

Maria T. Knoll, ID# 3425
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

June 12, 2014

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS ii

NATURE AND STAGE OF THE PROCEEDINGS 1

SUMMARY OF THE ARGUMENT 2

STATEMENT OF FACTS 3

ARGUMENT

I. STATEMENTS MADE BY THE PROSECUTOR IN CLOSING ARGUMENT DID NOT CONSTITUTE PROSECUTORIAL MISCONDUCT AND AS SUCH, DID NOT AMOUNT TO PLAIN ERROR 6

II. SUPERIOR COURT DID NOT ERR BY FAILING TO SPECIFICALLY INSTRUCT THE JURY WHAT WEIGHT TO GIVE THE TESTIMONY OF A JAIL-HOUSE INFORMANT 13

CONCLUSION 18

TABLE OF CITATIONS

CASES **PAGE**

Baker v. Reid, 57 A.2d 103 (Del.1947) 16

Baker v. State, 906 A.2d 139 (Del. 2006) 6, 7

Bland v. State, 263 A.2d 286 (Del.1970).....14

Brooks v. State, 40 A.3d 346 (Del. 2012) 13

Brown v. State, 233 A.2d 445 (Del. 1967) 8

Bullock v. State, 775 A.2d 1043 (Del. 2001) 16

Daniels v. State, 859 A.2d 1008 (Del. 2004) 11

Domanski v. State, 665 S.W.2d 793 (Tex. App. 1983).....8

Dyson v. United States, 418 A.2d 127 (D.C. 1980) 12

Flamer v. State, 490 A.2d 104 (Del.1983) 16

Floray v. State, 720 A.2d 1132 (Del.1998) 16

Grace v. State, 658 A.2d 1011 (Del. 1995) 16

Haas v. United Technologies Corp., 450 A.2d 1173 (Del.1982) 16

Hooks v. State, 416 A.2d 189 (Del. 1980) 10

Hughes v. State, 437 A.2d 559 (Del. 1991) 12

Johnson v. State, 919 S.W.2d 473 (Tx. 1986) 11

Justice v. State, 947 A.2d 1097 (Del. 2008) 12

Parker v. State, 717 S.W.2d 800 (Ark. 1986) 8

Smith v. State, 913 A.2d 1197 (Del. 2006) 16

State v. Diaz, 679 A.2d 902 (Conn.1996) 8

State v. Hamilton, 478 So.2d 123 (La.1985) 8

State v. Raguseo, 622 A.2d 519 (Conn. 1993) 8

State v. Rokus, , 483 N.W.2d 149 (Neb. 1992).....8

United States v. Isaac, 134 F.3d 199, 204 (3d Cir. 1998) 17

Wainwright v. State, 504 A.2d 1096 (Del. 1986) 6

Weedon v. State, 647 A.2d 1078 (Del. 1994) 8

Williams v. State, 804 S.W.2d 346 (1991).....8

STATUTES AND RULES

DEL. CODE ANN. Tit. 11, § 636.....1

DEL. CODE ANN. Tit. 11, § 1447A.....1

DEL. SUPR. CT. R. 8.....7

NATURE AND STAGE OF THE PROCEEDINGS

On August 16, 2011, Appellant, Sirron Benson, was arrested and subsequently indicted by a New Castle County Grand Jury for Murder in the First Degree (DEL. CODE ANN. Tit. 11, § 636) and Possession of a Firearm during the Commission of a Felony ("PFDCF") (DEL. CODE ANN. Tit. 11, § 1447A). A1 at DI 1, 4.

Benson proceeded to jury trial on April 9, 2013. A7 at DI 39. On April 16, 2013, he was convicted of Murder First Degree and PFDCF as indicted. A7 at DI 39. On June 21, 2013, after a presentence investigation, Benson was sentenced to life imprisonment plus 20 years.[1]

Appellant has appealed. This is the State's Answering Brief.

[1] *See* Sentence Order attached to Appellant's Opening Brief.

SUMMARY OF THE ARGUMENT

I. DENIED. The prosecutor's comments in rebuttal closing argument were proper. The prosecutor argued logical inferences drawn from the evidence that Benson intended to kill Curtis. The prosecutor's argument referred to the physical evidence, including the size of the gun and the bullets, which was easily visible and reviewable by the jury, who was free to accept or reject the prosecutor's argument. Because the prosecutor's comment here was not improper in the first instance, there was no plain error and this Court need not engage in the *Hughes* test of the prejudicial effect of improper prosecutorial argument.

II. DENIED. A defendant is not entitled to a particular instruction, but he does have the unqualified right to a correct statement of the substance of the law. Benson's jury was given the relevant instruction on the credibility of witnesses, conflicts in testimony and witness' conviction of a crime. The jury instructions given adequately guided the jury as trier of fact and determiner of credibility and correctly stated the law and enabled the jury to perform its duty. Particularly, because the evidence against Benson, independent of Lawhorn's testimony, was strong, there was no plain error.

STATEMENT OF THE FACTS

At approximately 10:45 p.m. on July 3, 2011, Braheem Curtis ("Curtis") was found shot near 9th and Kirkwood Street in the City of Wilmington. A20. Patrolman Patrick Malloy of the Wilmington Police Department ("WPD") arrived at the scene to find Curtis lying face-up on the southeast corner with a gunshot wound to his chest. A20. Curtis was transported to Christiana Hospital where he was pronounced dead. A25. Hospital staff recovered a projectile on the stretcher next to Curtis' body. A26. An autopsy determined that Curtis was shot twice, once in the arm and once in the chest; he died as a result of the gunshot wound to his chest. A112. The projectile from his chest was recovered during the autopsy. A112.

Donnie Stephens ("Stephens"), who lived at 901 Kirkwood Street, witnessed Benson shoot Curtis. Stephens, who had known Benson for thirteen years and was related to him by marriage, specifically identified Benson as Curtis' killer. A30-31; 36. Stephens stated that on the night of the murder, Benson, who had been wearing a white t-shirt and blue jeans, was involved in an argument about firecrackers and had left stating "I'll be back" and "I have something for you." A33. Benson returned, raised his hand and fired a gun, hitting Curtis. A33. After the first shot, Benson shot Curtis again as he lay on the sidewalk. A33. Barbara Stephens, Donnie Stephens' wife, also knew Benson and saw him shoot Curtis

twice. A38. Shirl Williams ("Williams") witnessed the argument about the fireworks, heard Benson yell that the fireworks had to stop or he would get his gun, and saw Benson leave and return about ten minutes later. A51. Williams saw Benson raise a gun as he approached the corner. A51. She heard a pop and saw Curtis fall and then she saw Benson shoot him again. A51.

Shelly Cannon was outside in front of her house, about a block away when she observed a commotion. A58. She called 911. A58. Benson, whom she knew, then walked past her wearing a white t-shirt. A59. He was with a group and looked angry. A59. Later, she saw an individual walking back towards the intersection, raise his hand and she heard two shots. A60. She saw someone else fall. A60. The shooter, who she could not clearly see, had the same build, coloring and clothing as Benson. A60-61. The next day, it appeared that Benson had moved from the neighborhood and his cell phone was no longer being used. A140-42.

Robin Unthank ("Unthank") was on her front porch at 810 Lombard Street when she heard the gunshots. A68. She saw a young male run past her house who threw what looked like a black gun onto her roof. A68. Unthank called 911. A68. Sgt. Ralph Hauck located a .45 caliber Blackhawk revolver on Unthank's roof. A70-71. The revolver had six cartridges in the cylinder, two of which were spent. A72. Carl Rone, a Delaware State Police ballistics examiner, determined that the

projectiles were of the same caliber as the revolver but the projectiles were too heavily damaged to permit a conclusive comparison. A88. The DNA profile taken from swabs of the revolver were consistent with being a mixture of Benson's known DNA profile and the DNA profile of at least three other individuals. A77-78, 118-121.

Benson was arrested on August 16, 2011 in Dover, Delaware by the U.S. Marshals Service. A95-96. While incarcerated at Howard R. Young Correctional Institution awaiting trial, Benson told his cellmate, David Lawhorn, that he had shot Curtis, threw the gun onto a rooftop, and then fled to Dover. A105-106.

I. STATEMENTS MADE BY THE PROSECUTOR IN CLOSING ARGUMENT DID NOT CONSTITUTE PROSECUTORIAL MISCONDUCT AND AS SUCH, DID NOT AMOUNT TO PLAIN ERROR.

Question Presented

Whether the prosecutor's statement in rebuttal closing argument about the size of the gun amounted to prosecutorial misconduct.

Standard and Scope of Review

This Court reviews claims of prosecutorial misconduct to which there was no such objection at trial for plain error.[2] This Court will first review the record *de novo* to determine whether prosecutorial misconduct has in fact occurred.[3] If the Court finds no error, the analysis ends.[4] If, however, the Court finds the prosecutor erred, the Court applies the *Wainwright* standard,[5] under which, "plain error is limited to material defects which are apparent on the face of the record, which are basic, serious, and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[6] Where

---

2 *Baker v. State*, 906 A.2d 139, 150 (Del. 2006) ("[W]here defense counsel fails to raise *any* objection at trial to alleged prosecutorial misconduct and the trial judge fails to intervene *sua sponte*, we review claims of prosecutorial misconduct on appeal for plain error.").

3 *Id.*

4 *Id.*

5 *Id.*

6 *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citations omitted).

the Court finds plain error, it will reverse with no further analysis, but where no plain error is found, the Court may still reverse on the grounds that the error was part of a pattern of misconduct that "cast[s] doubt on the integrity of the *judicial* process."[7]

Merits of the Argument

Benson claims that in State's rebuttal closing argument, the prosecutor made impermissible inflammatory remarks stating his own opinion regarding Benson's intent to kill based upon the size of the firearm.[8] He is incorrect.

A. Benson Raised No Prosecutorial Misconduct Claim Below.

Benson is barred from relief by Supreme Court Rule 8, which limits appellate review to "questions fairly presented to the trial court . . . ."[9] Benson is therefore precluded from raising a claim of prosecutorial misconduct on appeal because he raised no such objection during trial. While the general rule includes an exception, allowing review "in the interests of justice," [10] there is no compelling reason to invoke that exception here. Benson had a fair opportunity to make objections to the currently targeted portion of the prosecutor's rebuttal closing

---

7 *Baker*, 906 A.2d at 150. (emphasis in the original).

8 Op. Brf. at 18-20.

9 DEL. SUPR. CT. R. 8.

10 *Id*.

statement. He did not. Having failed to properly preserve an objection at trial, Benson waives the issue for appeal.[11]

B. The Prosecutor's Comments were Proper

In order to prove that Benson was guilty of first degree murder, the State was required to prove that he intentionally killed Curtis. Intent must usually be inferred from the acts done.[12] Intent necessary for first degree murder may be inferred from the type of weapon used, the manner in which it was used, the type of wound inflicted and the events leading to and immediately following the death."[13] To that end, Superior Court instructed the jury as follows:

> State of mind. One element of a criminal offense is the defendant's state of mind. It is difficult to know what is going on in another person's mind. Therefore, you are permitted to draw an inference, or reach a conclusion, about the defendant's state of mind based on the facts and circumstances surrounding the act the defendant is alleged to have done.

A151.

---

11 *Weedon v. State*, 647 A.2d 1078, 1082 (Del. 1994).

12 *Brown v. State*, 233 A.2d 445, 447 (Del. 1967).

13 *State v. Diaz*, 679 A.2d 902, 916 (Conn. 1996); *State v. Raguseo*, 622 A.2d 519 (Conn. 1993); *State v. Rokus*, 483 N.W.2d 149, 154-55 (Neb. 1992) (No one "could argue that a hollow-point bullet fired from a .44 Magnum is not a life-threatening projectile. Intent to kill may be inferred from deliberate use of a deadly weapon in a manner reasonably likely to cause death."); *Williams v. State*, 804 S.W.2d 346 (Ark.1991); *Parker v. State*, 717 S.W.2d 800 (Ark. 1986); *State v. Hamilton*, 478 So.2d 123 (La. 1985); *Domanski v. State*, 665 S.W.2d 793, 798 (Tex. App. 1983) (every case of murder presents a different factual situation where the State must establish the existence of intent to kill which may be inferred by the mode of killing, whether by a firearm which is deadly per se, or the manner in which a weapon other than a firearm is used).

Defense counsel argued in closing argument that the State both failed to identify Benson as the shooter and failed to prove the necessary intent to prove first degree murder. A139-141. Defense counsel argued that this was only an argument over fireworks "no words that would invoke intent to commit murder [were] uttered by the defendant at the scene." A141-142. He discounted Benson's comment "I got something for you" as meaning "a lot of things." A141. As to state of mind, defense counsel specifically argued that the jury needed to focus on the surrounding facts and circumstances to determine the shooter's lack of intent and argued that the shooting started from a distance and "what you have is a young person walking by and discharging the gun almost as an afterthought." A141-142. Defense counsel specifically discussed the firearm stating the shooter's of lack of intent is shown by the fact that only two of the six bullets in the firearm were discharged. A141. He argued that 20-year old men act impulsively and with poor judgment. A141. Defense counsel urged the jury to use their life experiences and common sense in their deliberations. A142. Lastly, defense counsel argued that "a lesser included offense is the appropriate verdict in this case." A142.

The prosecutor began his rebuttal argument by reminding the jury that the attorney's opinions did not matter, it was the jury's duty to decide the evidence in the case. A142. The prosecutor reviewed that a number of people identified Benson as the shooter and Benson told Curtis "I've got something for you," left,

came back minutes later and shot Curtis once, and then again as he was laying on the ground. A143-144. Benson then ran, threw the gun onto a roof on Lombard Street and fled to Dover, where he was later apprehended. A143. While in jail, he told his cellmate that he killed Curtis. A143.

In discussing state of mind, the prosecutor commented:

> Because the most important evidence, the proof that leaves you beyond all doubt of his intention came from – look at the size of this gun, a .45 caliber gun. It's no peashooter, as they say. It's not a BB gun. It's not a small gun. Look at the bullets. They're in evidence. Look how big they are. This is a weapon to kill somebody. When you shoot somebody one time with a weapon this large, do you think it's their intent – can you infer from that their intent to shoot to kill them? Absolutely."
>
> But again, that's not all you have here. Right? Because he not only shot him. Because if his conscious object and purpose was to hurt him, he did that with the first shot. He did that with the first shot. Braheem went down on the ground. [] He could have just walked on or ran on or whatever. But he didn't do that. Because you remember what the testimony was. He shot him. And when he was down, he made sure he was going to kill him because he points down and shoots him again. And how is that not intent to kill somebody.

A145.

In closing argument, a prosecutor "is allowed and expected to explain all the legitimate inferences of the [defendant's] guilt that flow from the evidence."[14] Like any other weapon, the size of the weapon in this case was a fact in evidence which

[14] *Hooks v. State*, 416 A.2d 189, 204 (Del. 1980).

the jury could logically consider in its deliberation. In *Johnson v. State*,[15] the Texas Court of Appeals considered whether a knife could be used as a deadly weapon and determined that, although a knife may not be a deadly weapon per se, a jury may consider all of the facts of the case, "and the State can prove, even without expert testimony, that a particular knife is a deadly weapon by showing its size, shape, sharpness, the manner of its use, and its capacity to produce death or serious bodily injury".[16]

Here, the prosecutor's comments were nothing more than proper rebuttal argument. The prosecutor argued an inference logically drawn from the evidence - a large gun and bullets, much like any other large weapon, is circumstantial evidence of defendant's intangible intent to kill. The prosecutor's argument referred to the physical evidence, including the size of the gun and the bullets, which was easily visible and reviewable by the jury, who was free to accept or reject the prosecutor's argument.[17] When the prosecutor's argument is viewed in the context of all the evidence, it is clear that the prosecutor argued an inference which could be drawn from the evidence. The prosecutor's argument on this point

[15] 919 S.W.2d 473 (Tex. Ct. App. 1986).

[16] *Id*. at 476.

[17] See *Daniels v. State*, 859 A.2d 1008, 1011-12 (Del. 2004). (finding prosecutor did not mischaracterize the significance of the DNA evidence by stating it show that Defendant was at the crime scene outside of the car).

was neither inflammatory nor improper. Because the prosecutor's comment here was not improper in the first instance, there was no plain error and this Court need not engage in the *Hughes*[18] test of the prejudicial effect of improper prosecutorial argument.

[18] *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981) (citing *Dyson v. United States*, 418 A.2d 127, 132 (D.C. 1980)). In the harmless error analysis for prosecutorial misconduct set forth by *Hughes*, if this Court determines that the prosecutor engaged in misconduct, it must determine whether the improper comments or conduct prejudicially affected a defendant's substantial rights by applying the three factors of the *Hughes* test, which are (1) the closeness of the case, (2) the centrality of the issue affected by the error, and (3) the steps taken to mitigate the effects of the error. *Justice v. State*, 947 A.2d 1097 (Del. 2008).

II. SUPERIOR COURT DID NOT ERR BY FAILING TO SEPARATELY INSTRUCT THE JURY WHAT WEIGHT TO GIVE THE TESTIMONY OF A JAIL-HOUSE INFORMANT

Question Presented

Whether Superior Court committed plain error by failing to specifically instruct the jury how to weigh the testimony of jail-house informant David Lawhorn?

Standard of Review

When there is no objection to the instructions during trial, this Court reviews the content of jury instructions for plain error.[19]

Merits of the Argument

Benson argues that by failing to instruct the jury that they should treat the testimony of a jailhouse informant, David Lawhorn, with "great care and caution," the Court committed reversible error. He is mistaken.

At trial, Lawhorn testified that from January through August 2012, while he was incarcerated at Howard R. Young Correctional Facility for pending burglary charges, he was Benson's cellmate. A105. Lawhorn testified that Benson told him that on July 3, 2011, he and a bunch of friends were partying and shooting off fireworks on Kirkwood Street when he got into an argument with Curtis. A105.

[19] *Brooks v. State*, 40 A.3d 346, 351 (Del. 2012).

Benson said he was going to go home and get his gun, but his friends talked him out of it. A105. Benson left, but returned and got a .45 caliber revolver from one of "his boys" and shot across the street, hitting Curtis in the chest. A105-106. When Curtis grabbed his chest and fell to the ground, Benson ran to him and shot him again and then left, throwing the gun onto a rooftop as he ran towards Bethel Villa. A106. From there, Benson's brother, Lovey, took him to Dover. A106. In his direct testimony, Lawhorn stated that, prior to testifying, he had pled guilty to multiple burglary charges and received a four and half year sentence and had a prior conviction for robbery first degree. A106. Lawhorn further acknowledged that in return for his agreement to testify truthfully against Benson he understood that he would receive substantial assistance. (A106). On cross-examination, Benson reviewed with Lawhorn his prior convictions for burglary and robbery, his basis of knowledge and his motivations for testifying. (A106-109).

During the prayer conference, the parties specifically discussed Lawhorn's testimony. A131. The trial judge noted the relevance of the "witness' conviction for a crime" instruction to Lawhorn. A131. Benson's counsel then told the court that he was unable to find and was unaware of a "super-duper cautionary instruction" similar to *Bland*'s[20] accomplice liability instruction that would apply to Lawhorn's informant testimony. A132. Benson's counsel stated he was

[20] 263 A.2d 286, 289 (Del.1970).

bringing the issue up "just to make sure [he was] not missing something." A132. The trial judge responded that counsel was free to submit an instruction for consideration. The State commented that the "credibility of witnesses'" instruction already informed the jury to consider the motivation for a witness' testimony. A132. The record reflects that Benson's counsel did not submit a follow-up instruction and, despite opportunity, did not object to the instructions as read. A136; A146.

As to credibility of the witnesses, Superior Court instructed the jury:

> You are the sole judges of the credibility of witnesses and of the weight to be given their testimony. You are to judge the credibility of all of the witnesses who have testified before you. And police officers are witnesses just like anybody else, and you should judge their credibility, just as you would any other witness.
>
> For each witness, you may consider the following factors: the circumstances under which the witness obtained the knowledge, the strength of memory, the opportunity for observation, their reasonableness or unreasonableness of the testimony, the consistency or inconsistency of the testimony, the motivations of the witness, whether the testimony has been contradicted, whether the witness has any bias or prejudice or interest in the outcome of the case, the manner or behavior or demeanor of the witness on the witness stand, the apparent truthfulness of the testimony, and all other facts and circumstances shown by the evidence that may affect the credibility of the testimony.

(A150-151).

In making a determination regarding conflicts in testimony, Superior Court again instructed the jury, among other things, to consider the witness' demeanor or behavior, the reasonableness of the testimony, "the witness' opportunities for

learning and knowing the facts about which they testify, and any prejudice or interest they may have concerning the outcome of the case." (A151). The jury was further instructed that a witness' conviction for a crime of dishonesty could be considered for judging the credibility of that witness. (A151).

The test for determining the appropriateness of jury instructions is well settled. "As a general rule, a defendant is not entitled to a particular instruction, but he does have the unqualified right to a correct statement of the substance of the law."[21] "A trial court's jury charge will not serve as grounds for reversible error if it is 'reasonably informative and not misleading, judged by common practices and standards of verbal communication.'"[22] Therefore, as long as the court's jury instruction was legally correct, the fact that it differed from Benson's current desired instruction, which was not requested at trial, is irrelevant.[23]

Benson's argument that the jury should have been given an instruction in keeping with the Third Circuit's Pattern Jury Instruction for informant witnesses[24] is unavailing. Benson acknowledges that an informant witness instruction is not

[21] *Smith v. State*, 913 A.2d 1197, 1242 (Del. 2006); *Bullock v. State*, 775 A.2d 1043, 1047 (Del. 2001); *Floray v. State*, 720 A.2d 1132, 1138 (Del. 1998)(quoting *Flamer v. State*, 490 A.2d 104, 128 (Del.1983)).

[22] *Bullock*, 775 A.2d at 1047 (citing *Baker v. Reid*, 57 A.2d 103, 109 (Del.1947)). *See also Haas v. United Technologies Corp.*, 450 A.2d 1173, 1179–80 (Del.1982); *Flamer*, 490 A.2d at 128.

[23] *See Grace v. State*, 658 A.2d 1011, 1014 (Del. 1995).

[24] Op. Brf. at 23-24.

required in all cases and, indeed, the one case he cites to support him, *United States v. Isaac*,[25] did not require such an instruction.[26]

Here, Benson exposed Lawhorn's reasons for testifying and expounded upon them in closing argument:

> We know what David Lawhorn is. He's a convicted robber, serial burglar. He's been sentenced to four and a half years in jail. And now he comes into court and he's got a deal with the State. Come in and tell you what you allegedly heard the defendant tell you. And the State, the Department of Justice, will file a motion with the judge. And the judge will make a decision about whether he cuts David Lawhorn a break. How credible or trustworthy is that type of person on the stand that has an ulterior motive to come forward? He didn't come forward when he first heard the defendant allegedly tell him this stuff.

A140.

Benson's jury was given the pattern instruction on the credibility of witnesses, conflicts in testimony and witness' conviction of a crime. The jury instructions given adequately guided the jury as trier of fact and determiner of credibility and correctly stated the law and enabled the jury to perform its duty. Particularly, because the evidence against Benson, independent of Lawhorn's testimony, was strong, there was no plain error.

[25] 134 F.3d 199, 204 (3d Cir. 1998).

[26] *Id*. at 205.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

Respectfully submitted,

/s/ Maria T. Knoll
MARIA T. KNOLL (I.D. No. 3425)
Deputy Attorney General
Department of Justice
820 N. French Street, 7th Floor
Wilmington, Delaware 19801
(302) 577-8500

DATE: June 12, 2014

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on this 12th day of June 2014, she caused the attached ***STATE'S ANSWERING BRIEF*** to be served electronically via Lexis/Nexis File and Serve upon:

Peter W. Veith, Esq.
1120 West Street
Wilmington, DE 19801

/s/ Maria T. Knoll
Maria T. Knoll (#3425)
Deputy Attorney General
Department of Justice
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500