



IN THE SUPREME COURT OF THE STATE OF DELAWARE

IRA BROWN,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 178, 2014**
)
 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

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

DATE: August 11, 2014

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NATURE AND STAGE OF THE PROCEEDINGS

On November 21, 2011, a New Castle County Grand Jury returned an indictment against Ira Brown (“Brown”) alleging drug and weapons offenses. A-1. Brown was re-indicted on March 12, 2012. A-2. That indictment alleged Possession of a Controlled Substance in a Tier 5 Quantity, Drug Dealing in a Tier 4 Quantity, Possession of Drug Paraphernalia and driving with a suspended license. A-2. On April 24, 2012, the scheduled trial date, Brown pled guilty to Drug Dealing in a Tier 4 Quantity. A-3. At sentencing on April 25, 2012, Brown made an oral motion to withdraw his guilty plea which was denied without prejudice. A-3. At that time, the sentencing judge gave Brown’s counsel leave to file a motion to withdraw the guilty plea. A-3. Brown was sentenced to 12 years incarceration followed by descending levels of supervision. A-10. On April 27, 2012, Brown’s counsel filed a motion to withdraw Brown’s guilty plea and a simultaneous motion to withdraw as counsel. A-3. On May 17, 2012, Brown’s motion to withdraw his guilty plea was denied and his counsel’s motion to withdraw from representation was granted. A-4. On April 23, 2013, Brown filed a Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61. A-5. Brown appealed the Superior Court’s denial of his post-conviction motion. This is the State’s answering brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. Brown is not entitled to a new trial because of a recent investigation into the Office of the Chief Medical Examiner ("OCME"). Brown has presented no evidence that his case was affected by the OCME investigation. Brown's guilty plea acted as a waiver of any claims with regard to the chain of custody in his case. The State was not under a *Brady* obligation to provide Brown with potential witness impeachment material prior to the entry of his plea.

II. Appellant's argument is denied. The Superior Court correctly denied Brown's motions to withdraw his guilty plea. Brown is procedurally barred from raising this claim for the first time on appeal because he (1) failed to raise it on direct appeal; and (2) failed to raise it in the Superior Court in postconviction. Even if this Court were to consider Brown's claim, the Superior Court did not err by denying Brown's motions to withdraw his guilty plea after considering both motions under the appropriate criminal rules.

STATEMENT OF FACTS

Because Brown pled guilty prior to trial, the following facts are based on the affidavit of probable cause based upon which a magistrate issued the arrest warrant for Brown.¹

On October 26, 2011, members of the Wilmington Police Department's Drug Unit were conducting an investigation into suspected illegal activity occurring at 2521 Bowers Street in Wilmington, Delaware. During the course of the investigation, police observed Brown driving a car and conducted a traffic stop after confirming that Brown's driver's license was suspended. When police officers approached the car, they observed a clear plastic bag containing marijuana in the lap of the front passenger, Brandy Aiken ("Aiken"). At that point, police removed Brown, Aiken, and a third passenger, Azania Parker ("Parker") from the car. Police observed marijuana leaves on Parker's lap and discovered a bag of marijuana in Parker's purse. Brown, Parker and Aiken were taken into custody. When Brown was arrested, police found a Wilmington Housing Authority ("WHA") key and a large bundle of cash containing \$856.00 in his possession.

After arresting Brown, police obtained a search warrant for 2521 Bowers Street. Using the WHA key found on Brown, police executed the search warrant

¹ The affidavit of probable cause prepared by Corporal Michael Ballard of the Wilmington Police Department is attached as *Exhibit A*.

and discovered 917 bags of heroin in a bedroom, along with a wallet containing Brown's identification and mail addressed to Brown. In the closet of the same bedroom police found paraphernalia normally associated with the preparation and packaging of heroin for sale. Police additionally found 30 rounds of .40 caliber ammunition in the bedroom.

ARGUMENT

I. BROWN’S DUE PROCESS RIGHTS WERE NOT VIOLATED BECAUSE THERE IS NO EVIDENCE THAT HIS CASE WAS AFFECTED BY ANY ILLEGAL ACTIVITY OR DEFICIENT SECURITY PROCEDURES AT THE OFFICE OF THE CHIEF MEDICAL EXAMINER. THIS IS ESPECIALLY TRUE IN LIGHT OF BROWN’S GUILTY PLEA.

Question Presented

Whether Brown is entitled to a new trial because of a recent investigation into illegal activity and deficient security procedures at the Office of the Chief Medical Examiner (“OCME”) in light of his guilty plea to a drug charge and no evidence that his case was affected by the OCME investigation.

Standard and Scope of Review

This Court reviews a claim made for the first time on appeal under Rule 8 in the “interests of justice.”²

Merits of the Argument

For the first time on appeal³ Brown claims that he is entitled to a new trial because an investigation of the OCME yielded indictments of two of its personnel and exposed mismanagement and non-compliance with security procedures at the

² Supr. Ct. Rule 8.

³ This issue was not raised in Brown’s postconviction motion nor was it addressed in the Superior Court’s order from which he now appeals. Brown however, invokes this Court’s jurisdiction under the “interests of justice” clause contained in Supreme Court Rule 8.

controlled substances laboratory. The issues and evidence brought to light by the OCME investigation, Brown argues, constitute newly discovered evidence which would change the outcome of his case if a new trial is granted. He further argues that the newly discovered evidence should be considered *Brady* material which was not turned over by the State. Brown's claims are unavailing.

At the outset, Brown is unable to articulate how his case was affected by the OCME investigation. While Brown points to issues in other cases, he does not allege that there were discrepancies with regard to the drugs tested in his case. Indeed, the drugs tested in Brown's case were audited on April 10, 2014 as part of the OCME investigation and the result of that audit found no discrepancies.⁴

Because Brown's convictions did not rely upon any scientific test results produced at the OCME, Brown cannot establish any prejudice from any failure of the State to provide any information related to the OCME testing, including the chain of custody information. Chain of custody relates to evidence sought to be admitted at trial. Brown did not go to trial, and waived his trial rights by pleading guilty. Moreover, under well-settled Delaware law, Brown's "voluntary plea of guilty constitutes a waiver of any defects or errors occurring prior to the entry of

⁴ *Exhibit B.*

the plea.”⁵ He benefited by pleading prior to trial, and any problems with evidence were waived by that plea. Brown is thus prevented from challenging the chain of custody. This is because a guilty plea breaks the chain of events in the criminal proceedings and constitutes a waiver of possible defenses.⁶

Brown also claims the State violated *Brady v. Maryland*⁷ by not providing impeachment material about the State’s chain of custody witnesses before he pled guilty. Brown’s *Brady* claim fails; in the succinct words of the United States Supreme Court, “the Constitution does not require the [State] to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant.”⁸

To establish a *Brady* violation, a defendant must show (1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the

⁵ *Coverdale v. State*, 2002 WL 86710, ¶ 4 (Del. Jan. 15, 2002); *Somerville v. State*, 703 A.2d 629, 631-32 (Del. 1997); see *Downer v. State*, 543 A.2d 309 (Del. 1988) (finding plea to non-existent offense valid “where defendant’s conduct brought him within the jurisdiction of the court . . . and the allegations result in plea bargaining”); *Fullman v. State*, 1989 WL 27739, at *1 (Del. Feb. 22, 1989) (citing *State v. Stoesser*, 183 A.2d 824, 825 (Del. Super. Ct. 1962)) (“a properly entered plea of guilty constitutes a waiver of all errors or defects occurring before the plea, except lack of subject matter jurisdiction”).

⁶ *Tollett v. Henderson*, 411 U.S. 258, 266-67 (1973).

⁷ 373 U.S. 83 (1963).

⁸ *United States v. Ruiz*, 536 U.S. 622, 633 (2002).

defendant.⁹ Because the credibility and bias of witnesses can be central to the State's case at trial, impeachment evidence can also fall under the *Brady* umbrella.¹⁰ In *Giglio*, the Supreme Court held that where the reliability of a witness may be determinative of guilt or innocence of a criminal defendant, nondisclosure of material evidence affecting the reliability of the witness justifies a new trial.¹¹

Application of the *Brady* rule is constrained by the procedural context from which a defendant's claim arises. The majority of criminal cases, like the instant case, are resolved through the plea process envisioned by Superior Court Criminal Rule 11.¹² The Rule 11 plea process affords a defendant various procedural protections and guides a two-step negotiation between the prosecutor and the defense in which both the prosecutor and the defendant compromise. The first step usually involves dropping charges in exchange for a guilty plea to another charge or charges. In the second step, the prosecutor usually agrees to recommend a lesser sentence in return for the guilty plea. As part of that negotiation process, the

⁹ *State v. Wright*, 67 A.3d 319, 324 (Del. 2013).

¹⁰ *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154-55 (1972).

¹¹ *Giglio*, 405 U.S. at 153.

¹² *Hall v. State*, 788 A.2d 118, 127 (Del. 2001) (noting "guilty pleas are a significant percentage of all convictions").

defendant waives constitutional rights associated with trial, and the prosecutor presents a sentencing recommendation to the Court.

Here, represented by counsel, Brown pled guilty in open court. He said that he understood his rights and the consequences of his guilty plea.¹³ The written plea agreement and Truth-in-Sentencing guilty plea form, both of which Brown signed, identify the charges to which he pled and the potential sentence for those charges.¹⁴ Brown said he was satisfied with his attorney's representation and that his attorney had fully advised him of his rights and the consequences of his guilty plea.¹⁵ In response to questions on the plea forms, Brown answered that he freely and voluntarily agree to plead guilty to the listed charge; that he was not promised anything not stated in the written plea agreement; that no one, including his attorney, had threatened or forced him to enter a guilty plea; and that no one had promised him what his sentence would be.¹⁶ Indeed, Brown admitted to knowing that the substance he possessed was heroin when he entered his guilty plea:

BROWN: Your Honor, on October 26, I possessed heroin and today in Court I'm pleading guilty to drug dealing

THE COURT: I understand. Now, you know that you had

¹³ B-7-8.

¹⁴ *Exhibit C*.

¹⁵ B-8; *Exhibit C*.

¹⁶ *Exhibit C*.

heroin on that day?

BROWN: Yes, Your Honor.

THE COURT: Okay. And you intended to deal drugs with that heroin?

BROWN: Yes, Your Honor.

THE COURT: And you know that was against the law?

BROWN: Yes, Your Honor.¹⁷

Brown also said that he understood and waived the right to a jury trial; the right to be presumed innocent; the right to testify or not to testify; the right to appeal to a higher court; the right to present evidence on his behalf; and, importantly, *the right to hear and question witnesses*.¹⁸

“[T]he Constitution does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant.”¹⁹ When a defendant pleads guilty he forgoes not only a fair trial, but also other accompanying constitutional guarantees.²⁰ “[I]mpeachment information is special in relation to the *fairness of a trial*, not in respect to whether a plea is

¹⁷ B-8.

¹⁸ B-7; *Exhibit C*.

¹⁹ *Ruiz*, 536 U.S. at 633.

²⁰ *Id.* at 628.

voluntary (‘knowing,’ ‘intelligent,’ and ‘sufficient[ly] aware’).²¹ “[A] constitutional obligation to provide impeachment information during plea bargaining, prior to entry of a guilty plea, could seriously interfere with the [State’s] interest in securing those guilty pleas that are factually justified, desired by defendants, and help to secure the efficient administration of justice.”²²

The United States Supreme Court’s clear pronouncement that prosecutors have no duty to provide impeachment evidence to a defendant who pleads guilty has been held to mean the prosecutor had no duty to provide impeachment evidence that a chemist in the chain of custody for tested drugs breached laboratory protocol.²³ The facts in *United States v. Wilkins* are similar to those here. Two defendants pled guilty to possessing crack cocaine with intent to distribute and distributing crack cocaine; the drugs were tested on May 24, 2011, defendant Wilkins pled in January 2012 and was sentenced in July 2012, and defendant Merritt pled guilty in June 2012 and was sentenced in September 2012.²⁴ By the time Merritt was sentenced, it had come to light that a chemist, who worked at the

²¹ *Id.* at 629 (emphasis in original).

²² *See id.* at 632.

²³ *United States v. Wilkins*, 943 F. Supp. 2d 248 (D. Mass. 2013), *aff’d sub nom. Wilkins v. United States*, ___F.3d___, 2014 WL 2462554 (1st Cir. June 3, 2014) and *sub nom. United States v. Merritt*, ___F.3d___, 2014 WL 2696723 (1st Cir. June 16, 2014).

²⁴ *Id.* at 252-54.

lab that tested the drugs, repeatedly breached laboratory protocols, rigged test results, and falsely certified she had tested drugs when she had not.²⁵ After the defendants moved to vacate their pleas, the drugs were retested and reweighed, and tested positive for cocaine.²⁶

Each defendant asserted their plea was procured in violation of the Due Process Clause of the Fifth Amendment under *Brady* based on information that would have “cast a shadow over the evidentiary value” of the chemist’s certifications.²⁷ Like Brown, neither defendant in *Wilkins* asserted actual innocence or that the seized drugs were not what the government said they were. The District of Massachusetts applied *Ruiz* and found “any impeaching material regarding [the chemist’s] mishandling of the evidence in theirs or other cases would only be relevant at trial to the extent that it might be used to challenge the chain of custody of the drugs at issue,” and that this had no relevance to the validity of the defendants’ guilty pleas.²⁸

As *Wilkins* illustrates, Brown has no remedy under *Brady* as curtailed by *Ruiz*. The State had no duty to provide that impeachment evidence to Brown before he pled guilty. That evidence would come into play only if he went to trial;

²⁵ *Id.* at 252, 254.

²⁶ *Id.* at 252-53.

²⁷ *Id.* at 254.

²⁸ *Id.* at 255.

by pleading guilty, Brown gave up his right to trial and to the disclosure of impeachment evidence. And here, Brown pled guilty after having the opportunity to review the controlled substances laboratory report. Brown has no colorable claim under *Brady*.

II. THE SUPERIOR COURT CORRECTLY DENIED BROWN’S MOTIONS TO WITHDRAW HIS GUILTY PLEA.

Questions Presented

Whether the Superior Court properly denied Brown’s motions to withdraw his guilty plea.

Standard and Scope of Review

The Superior Court’s decision to grant or deny a motion to withdraw a guilty plea is reviewed on appeal for abuse of discretion.²⁹ Claims not fairly presented below can only be reviewed for plain error.³⁰

Merits of the Argument

For the first time on appeal, Brown claims that the Superior Court erroneously denied his motion to withdraw his guilty plea. Brown did not appeal his conviction. Under Supreme Court Rule 6, Brown had 30 days from the date that his sentence was imposed to raise this issue on direct appeal. He failed to do so. Brown again failed to raise this issue in post-conviction.³¹ As a result, Brown

²⁹ *Anderson v. State*, 2014 WL 3511717, *2 (Del. July 14, 2014).

³⁰ Del Supr. Ct. R. 8; *Weber v. State*, 457 A.2d 674, 680 n.7 (Del. 1983).

³¹ Moreover, Brown would have been procedurally barred from raising this claim in post-conviction by Superior Court Rule 61(i)(4) which states:

(i) *Bars to Relief* . . .

(4) Former adjudication. Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of

is also precluded from raising this issue for the first time on appeal by Supreme Court Rule 8 because he never fairly presented the question to the trial court during the postconviction proceedings from which he now appeals, and he has not provided any reason for this Court to consider the issue in the “interests of justice.”³²

Even if this Court were to consider the merits of Brown’s claim, he should not be granted relief. Brown claims that the Superior Court should have considered his motion to withdraw his guilty plea under Superior Court Criminal Rule 32 rather than Superior Court Criminal Rule 61.³³ The plain language of Rule 32 contemplates the motion being “made before imposition ... of sentence.” However, as this Court noted in *Patterson v. State*, “at any later time, a plea may be set aside only by motion under Rule 61.”³⁴ Contrasting the two rules, the

conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred.

Brown’s oral motion to withdraw his guilty plea was initially decided by the Superior Court prior to sentencing on April 25, 2012. A-3. Brown’s counsel was given leave to formally file a motion to withdraw the guilty plea and a motion to withdraw from representation at that time. A-3. Brown’s counsel filed both motions two days later and the Superior Court reconsidered Brown’s motion to withdraw his guilty plea. A-3. On May 16, 2012, the Superior Court issued a revised order denying Brown’s motion to withdraw his guilty plea. A-4. Thus, Brown’s claim had been formerly adjudicated – twice.

³² Del. Supr. Ct. R. 8.

³³ *Op. Brf.* at 10-11.

³⁴ 684 A.3d 1234, 1237 (Del. 1996).

Patterson court explained that “Rule 32(d), as opposed to Rule 61, contemplates a lower threshold of cause sufficient to permit withdrawal of a guilty plea and one which must guide the discretion of the trial judge.”³⁵

Under Rule 32(d), a defendant has the burden of demonstrating a ‘fair and just reason’ to withdraw a guilty plea.³⁶ A trial judge should permit the withdrawal of a guilty plea “only if the court determines that ‘the plea was not voluntarily entered or was entered because of misapprehension or mistake of defendant as to his legal rights.’”³⁷ However, “[a]n effort to withdraw a guilty plea made after sentencing constitutes a collateral attack against the conviction and is subject to the strictures of Rule 61 including several bars of procedural default.”³⁸

Brown moved to withdraw his guilty plea on two occasions – once immediately prior to sentencing and once immediately after sentencing.³⁹ His first motion was denied after the Superior Court considered the factors outlined in Rule 32.⁴⁰ The Superior Court then correctly considered his second motion (which was

³⁵ *Id.*

³⁶ Super. Ct. Crim. R. 32(d).

³⁷ *Anderson*, 2014 WL 3511717 at *2 (quoting *Scarborough v. State*, 938 A.2d 644, 650 (Del. 2007); *State v. Insley*, 141 A.2d 619, 622 (Del. 1958)).

³⁸ *Patterson*, 684 A.2d at 1237.

³⁹ A-3.

⁴⁰ A-3.

made after sentencing) under Rule 61 in accordance with *Patterson*. Under Brown's theory, the Superior Court should have ignored *Patterson* and simply considered both motions under Rule 32. Here, the Superior Court did not abuse its discretion by considering Brown's two motions under two different rules because "[t]he timing of a motion to withdraw a guilty plea is an important factor in the exercise of that discretion, the significance of which is recognized in the rules governing the plea process."⁴¹

⁴¹ *Id.*

CONCLUSION

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

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

DATE: August 11, 2014

Adult Complaint and Warrant
In the Justice of the Peace Court
In and for the
State of Delaware

State of Delaware vs. **IRA M. BROWN**

I, CPL Michael E Ballard (17342) of WILMINGTON PD, do hereby state under oath or affirmation, to the best of my knowledge, information and belief that the above-named accused violated the laws of the State of Delaware by committing criminal acts in New Castle county on or about the date, or dates, and at or about the location, or locations, as indicated in Exhibit A hereto attached and made a part hereof.

Wherefore, your affiant prays that the above-named accused may be forthwith approached and held to answer this complaint consisting of **6** charges, and to be further dealt with as the law directs.

X _____
Affiant

Sworn to and subscribed to before me this 27th day of October AD, 2011.

Judge/Commissioner/Court Official

(To be completed by the Judge/Commissioner/Court Official)

- A. _____ The crime was committed by a child.
B. _____ A misdemeanor was committed against a child.
C. _____ A misdemeanor was committed by one family member against another family member.
D. _____ Other: Explain _____

Warrant

To any constable or other authorized person:

Whereas, the foregoing complaint consisting of **6** charges, having been made, as listed in Exhibit A which is attached hereto and incorporated herein, and having determined that said complaint has been properly sworn to and having found that there exists probable cause for the issuance of process, based upon the affidavit of probable cause which is attached hereto and incorporated herein as Exhibit B, you are hereby commanded in the name of the State of Delaware, to take **IRA M. BROWN** accused, and bring same before

JUSTICE OF THE PEACE COURT 20, FORTHWITH, to answer said charges

GIVEN UNDER MY HAND, this ____ day of _____, AD _____

Judge/Commissioner/Court Official

Executed on _____ by BALLARD

Case Number: **11 10 018439** Warrant Number: **30 11 013622** Arrest Number: **11 00 4926**

Ex. A

Exhibit A

Charge Sequence: 001 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Possesses a controlled substance in a Tier 5 quantity**

In Violation of 16 Del.C. § 4752 0003 F B

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did unlawfully possess a controlled substance, 917 CLEAR PLASTIC ZIP LOCK BAGS, EACH CONTAINING A BLUE GLASSINE BAG (813 STAMPED BANSHEE, 26 STAMPED SUPER POWER, 78 STAMPED MAN DOWN) WITH AN OFF WHITE POWDER THAT FIELD TESTED POSITIVE FOR HEROIN, WITH A TOTAL PRELIMINARY WEIGHT OF 18.34 GRAMS, which is listed as a Tier 5 quantity.

Charge Sequence: 002 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Poss Purch Own or Control of a Firearm or Ammunition by a Person Prohibited Prior Violent Crime Felony**

In Violation of 11 Del.C. § 1448 00a1 F D

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did knowingly purchase, own, possess or control a firearm or ammunition after having been convicted of a felony or a crime of violence involving physical injury in Criminal Action No(s) 0704021625 in the SUPERIOR of the State of DELAWARE in and for NEW CASTLE County on 09/24/2007 of the charges of RECKLESS ENDANGERING 1ST DEGREE.

Charge Sequence: 003 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Conspiracy Second Degree-Agreement to Aid Another Felony/Overt Act**

In Violation of 11 Del.C. § 0512 0002 F G

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did when intending to promote or facilitate the commission of a felony did agree to aid BIANCA BRITT in the planning or commission of the felony or an attempt or solicitation to commit the felony and did commit an overt act in furtherance of the conspiracy, wit AGGRAVATED DRUG DREALING OF HEROIN.

Charge Sequence: 004 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Possession of Drug Paraphernalia**

In Violation of 16 Del.C. § 4771 000a M B

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did possess, use or intent to use drug paraphernalia to A MARIJUANA GRINDER USED TO SEPARATE MARIJUANA SEEDS AND STEMS FROM LEAVES, AND BLACK RUBBER BANDS USED TO SECURE BUNDLES OF HEROIN in violation of Chapter 47, Title 16 of the Delaware Code as amended.

Charge Sequence: 005 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Driving While Suspended or Revoked**

In Violation of 21 Del.C. § 2756 000a M

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did drive a motor vehicle upon a public roadway known as EAST 11TH AND BENNETT STREETS during a period in which his driving privileges and/or license was suspended and/or revoked.

Charge Sequence: 006 Police Complaint Number: 30 11 098120 Arrest Number: 11004926

Charge: **Maintaining a Drug Property**

In Violation of 16 Del.C. § 4760 0000 F F

Location: 2521 Bowers ST - Wilmington, 19802

TO WIT: IRA M BROWN, on or about the 26th day of OCTOBER, 2011, in the County of NEW CASTLE, State of Delaware, did knowingly as the tenant of a property 2521 BOWERS STREET WILMINGTON DE 19802 consents to use said property of the renter, BIANCA BRITT, for possession with the intent to deliver 917 CLEAR PLASTIC ZIP LOCK BAGS, EACH CONTAINING A BLUE GLASSINE BAG (813 STAMPED BANSHEE, 26 STAMPED SUPER POWER, 78 STAMPED MAN DOWN) WITH AN OFF WHITE POWDER THAT FIELD TESTED POSITIVE FOR HEROIN, WITH A TOTAL PRELIMINARY WEIGHT OF 18.34 GRAMS.

Exhibit B

Also Known As:
Date of Birth/Age: [REDACTED] 1979 (35) Sex: **Male** Race: **Black/African American**
Eye Color: **Brown** Hair Color: **Brown** Height: **5'06"** Weight: **180 lbs**
Driver's License: **DE - 1167878** Social Security Number: [REDACTED]

Address: [REDACTED]
WILMINGTON, DE 19802

Phone:

Employer: **UNEMPLOYED**

Date and Times of Offense: **Between 10/26/2011 at 2125 and 10/26/2011 2125**

Location of Offense: **2521 Bowers ST - Wilmington, 19802**

Alias Names:
IRA D. BROWN
ERIC BROWN
IRA BROWN
IRA D. BROWN

Your affiant CPL Michael E Ballard can truly state that: On the above date and time, members of the WPD Drug Unit conducted a drug investigation at 2521 Bowers Street. This location is within the city of Wilmington, the county of New Castle, and the state of Delaware. Your affiant is a duly sworn member of the Wilmington Police Department, currently assigned as an investigator with the Drugs, Organized Crime, and Vice Division.

At approximately 2100 hours on this date, the subject of the investigation (hereafter referred to as Defendant 1 Brown, Ira, BMN, [REDACTED]79) was observed operating a silver Chrysler Pacifica (DE XC444100). It should be noted that your affiant confirmed through DELJIS that D1's driver's license was revoked. A vehicle stop was conducted at East and 11th and Bennett Streets. Upon approaching the vehicle, officers confirmed that D1 was operating the vehicle. In plain view on the front passenger's (Defendant 2 Aiken, Brandy, BFN, [REDACTED]1986) lap, officers observed a clear plastic bag containing a green plant substance consistent in appearance with marijuana. At that point, D1 and D2, as well as the rear passenger (Defendant 3 Parker, Azania, BFN, [REDACTED]1985) were removed from the vehicle and placed into custody. D3 was found to have a green zip lock bag containing a green leafy plant substance in her purse, as well as what appeared to be marijuana leaves on a wrapper on her lap. The defendants and the vehicle were transported to Central for processing. At the time of the stop, D1 was in possession of a WHA house key, and another door key attached to the car keys. D1 also had a large bundle of United States Currency.

At approximately 2125 hours a JP Court 20 search warrant was executed at 2521 Bowers Street. Upon making entry using the aforementioned key that was in D1's possession, a black female (Suspect Britt, Vonzella, BFN, [REDACTED]1967) was contacted in the kitchen of the residence. She was placed into custody without incident. On the second floor, in the southern bedroom, officers made contact with Defendant 4 (Britt, Bianca, BFN, [REDACTED]1989), who was lying in bed with her three juvenile sons ([REDACTED] Britt [REDACTED]2006, [REDACTED] Britt [REDACTED]2006, [REDACTED] Terry [REDACTED]2009). D4 was taken into custody and taken to the first floor with her sons. In the northern bedroom, on a book shelf in plain view, was a clear plastic bag, with what appeared to be numerous bundles of heroin. Next

Affiant

Sworn to and subscribed to before me this 27th day of October AD, 2011.

Judge/Commissioner/Court Official

to the bag was a leather wallet containing identification for Defendant 1 to include a insurance card, bank card, and social security card. On the bookshelf was a letter addressed to D1 at 2521 Bowers from the Delaware Department of Health and Human Services on August 1, 2011. Inside a blue bag on top of the book case was three knotted plastic bags containing numerous bundles of heroin. Inside the closet, in a plastic bag, were numerous heroin "log" wrappers. A "log" of heroin is typically 10 bundles of heroin, or 130 individual bags. Additionally, a grinder and bag of black rubber bands was found inside the closet. It should be noted that a grinder is used to separate marijuana leaf from the stems and seeds. Further, the black rubber bands are used to secure a bundle of heroin. It should be noted that paperwork in the name of D1 was found in the room along with male clothing. Officers also recovered a box of Winchester .40 caliber ammunition, containing 31 individual .40 caliber rounds. It should be noted that D1 is a person prohibited from possessing a firearm or ammunition as a result of a felony conviction in DE Superior Court on 09/24/07 for Reckless Endangering 1st Degree. Further, the door key found on the ring with the WHA key opened the door to the room.

Suspect Britt and D4 were transported to Central. The juvenile males were turned over to Ms. [REDACTED] Hawkes (BFN [REDACTED] 1979 [REDACTED] with the approval of D4.

The marijuana found in the vehicle was field tested, with positive results, and found to have a total preliminary weight of 2 grams. The heroin was comprised of 917 individual clear plastic zip lock bags, each containing a blue glassine bag (813 were stamped "Banshee", 26 were stamped "Super Power", and 78 were stamped "Man Down"), containing an off white powder that field tested positive for heroin, with a total preliminary weight of 18.34 grams. D1 possessed \$856 USC in the following denominations: 1 \$50 bill, 33 \$20 bills, 14 \$10 bills, 1 \$5 bill, and 1 \$1 bill. Said currency, along with the 2004 Chrysler Pacifica were held for seizure while and application to seize them is filed with the Attorney General's Office. Both D1 and D4 signed seizure forms. All evidence was tagged and turned over to the Temporary Evidence Locker, as witnessed by MSGT Rodriguez. D2 and D3 were issued summons numbers 092778 and 132880 respectively for possession of marijuana and sent on their way.

Affiant: CPL Michael E Ballard (17342) of WILMINGTON PD

Victims:	Date of Birth	Relationship Victim to Defendant
SOCIETY/PUBLIC		Victimless Crime
IRA BROWN		Victimless Crime
BIANCA BRITT		Victimless Crime

Affiant

Sworn to and subscribed to before me this 27th day of October AD, 2011.

Judge/Commissioner/Court Official

State of Delaware vs. **IRA M. BROWN**

Case Number: 11 10 018439

Approval and Arrest Information

Approved by: **100900 : SKELLEY DAVID R.**

Approved on: **10/27/2011 at 02:52 AM**

Approval Entered by: **CJPSMAN : STEPHANIE L MANLEY**

Active Arrest Number:

Date of Arrest:

Arresting Agency:

Arresting Officer:

OCME INVESTIGATION

ME Control # CS-11-5118 - A, B, + C + D

Inspected by: V.J. / A.J.

Date: 4-10, 2014

Time Opened: 1235 hrs

Time Closed: 1307 hrs

Discrepancy? Yes / No

Comments:

- Iron Brass

30-11-98120

- Brian Beck

- Azwin Parker

- Brady Aiken

TRUTH-IN-SENTENCING GUILTY PLEA FORM
 IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
 IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
 v. IRA BROWN)

ID: 1110018439

CRA: _____

Date of Birth 3/15/79

Last grade in school completed 12TH

- Have you ever been a patient in a mental hospital? Yes No
- Are you under the influence of alcohol or drugs at this time? Yes No
- Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement? Yes No
- Have you been promised anything that is not stated in your written plea agreement? Yes No
- Has your lawyer, the State, or anyone threatened or forced you to enter this plea? Yes No
- Do you understand that because you are pleading guilty you will not have a trial, and you therefore waive (give up) your constitutional rights:
- (1) to have a lawyer represent you at trial
 - (2) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
 - (3) to a speedy and public trial by jury;
 - (4) to hear and question the witnesses against you;
 - (6) to present evidence in your defense;
 - (7) to testify or not testify yourself; and,
 - (8) to appeal, if convicted, to the Delaware Supreme Court with assistance of a lawyer?

OFFENSE	STATUTORY PENALTY Incarceration	MINIMUM MANDATORY (if any)	TIS GUIDELINE	Amount of Fine (range if applicable)
<u>DRUG DELIVERY</u>	<u>2-25 yrs</u>	<u>2 yrs</u>	<u>2-5 years</u>	

FILED
 PROTHONOTARY
 2012 APR 24 PM 12:31

TOTAL CONSECUTIVE MAXIMUM PENALTY: Incarceration: 25 Fine: _____

- NON-CITIZENS: Are you aware that conviction of a criminal offense may result in deportation/removal, exclusion from the United States, or denial of naturalization?* N/A Yes No
- Is there a **minimum mandatory penalty**? Yes No
- Is there a **mandatory revocation of driver's license or privileges** as a result of your plea? Yes No
- If so, what is the **length of revocation**? 6 months years
- Has anyone promised you what your sentence will be? Yes No
- Were you on **probation or parole** at the time of this offense? (A guilty plea may constitute a violation.) Yes No
- Do you understand that a guilty plea to a felony will cause you to **lose your right to vote, to be a juror, to hold public office, to own or possess a deadly weapon, and other civil rights**? Yes No
- Is this an offense which results in the loss of the **right to own or possess a deadly weapon**? Yes No
- Are you satisfied with your lawyer's representation of you, and that your lawyer has **fully advised you of your rights**? Yes No
- If this is an offense which requires **registration as a sex offender**, has your lawyer discussed those requirements with you? N/A Yes No
- Have you read and understood all the information in this form?** Yes No
- Are all your answers **truthful**? Yes No

Defense Counsel: [Signature] Date: 4/24/12 Defendant: IRA BROWN

Print Name: Patrick Cousins Print Name: IRA BROWN

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

PLEA AGREEMENT

*DCS
MAS*

Case No(s): 1110018439

State of Delaware v. Ira Brown

C.A. No(s):

HABITUAL OFFENDER ELIGIBLE, Title 11 §4214(a) §4214(b) BOOT CAMP DIVERSION ELIGIBLE:

- Title 16, §4763 sentence –previous qualifying drug conviction
- Title 21:
- School Teacher or Administrator convicted of a crime as described in Title 11, §4101(e)
- Title 11, §4120, §4121 – Sex offender registration required
- Title 11, §4336 –Sex offender notification required
- DUI BAC: No BAC

DEFENDANT WILL PLEAD: GUILTY TO:

Count	C.A. No.	Charge (if LIO, indicate and include applicable citation)	FILED	PROthonotary	2012 APR 24 PM 12:31
1	IN11110555	Drug Dealing (Heroin) - 16 Del. C. § 4752(1) Class B Felony			

Upon the sentencing of the defendant, a *nolle prosequi* is entered on:

- all remaining charges on this case
 - the following charges:
- No PSI needed - already done 10/20/17349*

SENTENCE: State and Defendant request PSI Immediate Sentencing

Recommendation/Agreement: State will recommend: Open sentencing.

The State will request that the defendant be sentenced for this case in conjunction with case # 1012617349.

State and Defendant agree to the following:

- Restitution:
- No contact with
- Other Conditions:

Is this one page the complete Plea Agreement? Yes

DAG Michael J. Hendee
[Signature]
signature

DEF. COUNSEL Patrick Collins, Esq.
[Signature]
signature

Date 4/24/12

DEFENDANT *[Signature]* 4/24/12
signature date

Sentence Date: April 25, 2012

CERTIFICATION OF SERVICE

The undersigned certifies that on August 11, 2014, he caused the attached *State's Answering Brief* to be delivered electronically via Lexis/Nexis File and

Serve to the following person:

Michael C. Heyden, Esq.
1201 N. King Street
Wilmington, DE 79801
Attorney for the Appellant

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
(302) 577-8500