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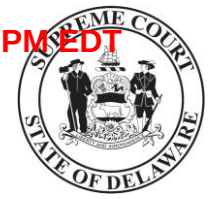

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDREW LLOYD,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No.: 680, 2015
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

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

APPELLANT'S OPENING BRIEF

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DATED: May 11, 2016

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NATURE AND STAGE OF THE PROCEEDINGS

On October 30, 2015, following an eight day jury trial, Andrew Lloyd was convicted of Criminal Racketeering; Conspiracy to Commit Criminal Racketeering; Aggravated Possession of Heroin (eight counts); Drug Dealing in Heroin (eight counts); Conspiracy Second Degree (eight counts); and Possession of Drug Paraphernalia. On November 18, 2015, Lloyd was sentenced to 64 years' incarceration at Supervision Level V followed by probation. This is Lloyd's Opening Brief in support of his timely filed appeal.

SUMMARY OF THE ARGUMENT

I. The trial court committed reversible error when it declined to give the racketeering jury instruction requested by Lloyd's counsel and where the instruction given by the trial judge failed to define the essential element of enterprise in a manner consistent with *Stroik v. State*. Because an essential element of the offense was not adequately defined, the instruction, as a whole cannot be considered reasonably informative and not misleading as required by *Baker v. Reid*.

II. The State did not prove existence of an association in fact enterprise beyond a reasonable doubt, therefore the evidence of Lloyd's guilt as to the racketeering charge is insufficient.

III. The State improperly vouched for the credibility of its witnesses when it inquired, on direct examination, as to whether they were testifying truthfully in conformance with their plea agreements.

IV. The cumulative effect of the State inquiring whether witnesses were testifying truthfully during their direct examination and the deficient racketeering instruction constitute reversible error.

STATEMENT OF FACTS

On October 30, 2014, as part of a multi-agency investigation spanning from December, 2013 through November, 2014, Andrew Lloyd (hereinafter "Lloyd") was arrested and charged with a litany of offenses. Lloyd was ultimately tried and convicted of Racketeering, Conspiracy to Commit Criminal Racketeering, Possession of Drug Paraphernalia, and eight counts each of Drug Dealing in Heroin, Aggravated Possession of Heroin, and Conspiracy Second Degree (A463-A466).

Investigative efforts of officers and agents from the Drug Enforcement Administration (hereinafter "DEA"); Delaware State Police (hereinafter "DSP"); Wilmington Police Department (hereinafter "WPD"); Federal Bureau of Investigation (hereinafter "FBI"); New Castle County Police Department (hereinafter "NCCPD"); and Dover Police Department included controlled and direct purchases of drugs; physical surveillance; and extensive wiretap surveillance. At the conclusion of the investigation Lloyd and 45 other defendants were arrested.

At Lloyd's trial, the State presented the testimony of seventeen of Lloyd's codefendants; twenty-seven law enforcement officers; a DNA expert; a forensic chemist; a civilian witness; and an inmate who shared a prison cell

with Lloyd prior to trial. Through these various witnesses, the State introduced over 170 pieces of evidence including hours of recorded wiretap phone calls. Through this evidence and testimony, the State sought to prove that Lloyd was not simply a drug dealer, but was instead the head of a criminal enterprise that accomplished its goals through drug dealing and violence.

The Codefendants' Testimony

The State, over objection by Counsel, called seventeen of Lloyd's codefendants as witnesses during its case in chief (A87-A582). The codefendants all testified to having resolved their cases by plea with cooperation agreements.[1] To demonstrate that Lloyd's activities amounted to racketeering rather than simple drug distribution, the State established through the codefendants that Lloyd and his codefendants Lakenya Howard, Galen Collins, and Wanda Lloyd had the nicknames "Obama", "Michelle", "Biden", and "Condoleeza" respectively.

Through the specific testimony of Wanda Lloyd, the State established that Wanda Lloyd's Claymont residence was occasionally referred to as the "White House" and that the nicknames were "part of the presidency" (A169-A170). On cross-examination, however, Wanda Lloyd clarified that the

[1] See, *infra*.

nicknames were simply a joke among friends (A171). Wanda Lloyd's testimony revealed that she had pled guilty to Conspiracy Second Degree, a lesser included offense of Conspiracy to Commit Racketeering and that she received a sentence of probation (A168).

To demonstrate that Lloyd's activities went beyond distributing large amounts of Heroin throughout New Castle County, the State called Davonte Lewis (hereinafter "Lewis") who pled guilty to Assault Second Degree; Possession of a Firearm During the Commission of a Felony; Racketeering; and Conspiracy to Commit Racketeering (A86-A87). Through his testimony, the State was able to establish that Lewis was involved with the December 29, 2013 shooting of Keith "Stemp" Brown and as a result of his plea and cooperation agreement would serve five years in prison (A87-A88). Lewis' testimony as pertains to Lloyd, however, was simply that he was aware that Lloyd was a co-defendant because he was indicted with him (A89).

Blayton Palmer testified that he pled no contest to one count of Possession of a Firearm by a Person Prohibited (PFBPP) and guilty to one count each of Drug Dealing in Heroin, Disregarding a Police Officers Signal, and Conspiracy Second Degree, a lesser included offense of Conspiracy to Commit Racketeering (A174-A175). On cross-examination, Blayton Palmer

testified that he received a sentence of five years in prison followed by probation (A175). He further testified that Lloyd was uninvolved in all of his charges with the exception of the Conspiracy Second Degree Charge (A175). Blayton Palmer's testimony did not, however, address any specifics as to his involvement with Lloyd (A175).

Kimwanya Allen's (hereinafter "Allen") testimony was limited. Allen testified to having pled guilty to Conspiracy Second Degree, a lesser included offense of Conspiracy to Commit Racketeering and to receiving a sentence of time served followed by probation (A176). Through Allen, the State demonstrated that she was aware of though uninvolved in Lloyd's drug activities (A176). The State also established that Allen was familiar with a number of the other codefendants and was involved in a high speed chase through Wilmington with a number of them resulting in the seizure of firearms thrown from the vehicle (A177-A178). Testimony reflected that Lloyd was notably absent from this incident (A177-A178).

Rakeem Mills (hereinafter Mills) testified on direct examination to having pled guilty to Conspiracy to Commit Racketeering (A183). Pursuant to his plea he was sentenced to 20 years, however, 18 years of Mills' sentence was the result of a trial conviction for his involvement in a shooting incident

that occurred on January 1, 2014 (A183). No specific testimony was given on direct, cross, or re-direct regarding specific incidences that related to the racketeering conduct to which he pled guilty (A182-A184).

Galen Collins (hereinafter "Collins"), alternately known as "Gilly" or "Biden", testified that he had pled guilty to Racketeering and firearm charges (A186-A187). Collins' testimony set forth that he was sentenced to a total period of incarceration of 5 years (A187). In his direct testimony, Collins testified to having made numerous phone calls during the month of March, 2014 including several calls to Wanda Lloyd who would occasionally set up a three way call with others including Lloyd (A187-A188). Collins' testimony only hinted that he was part of a racketeering enterprise with Lloyd (A187). Collins also testified that the nicknames "Obama", "Michelle", "Biden", "Condoleeza" and the "White House" were used simply in jest as a joke (A190-A192).

Demetrius Brown testified to having pled guilty to Conspiracy to Commit Racketeering and receiving a sentence of 25 years Level V incarceration suspended for probation (A194). Demetrius Brown testified specifically to having been present on January 9, 2014 in Philadelphia to purchase firearms (A195).

The State elicited from Demetrius Brown that he had known Lloyd for approximately 15 years and knew that Lloyd made money through heroin distribution (A193). He further testified to knowing that Lloyd obtained his heroin from a source in Philadelphia (A193). Demetrius Brown's testimony also detailed the manner in which the bundles of heroin from Philadelphia would be "broken down" at Wanda Lloyd's Claymont residence (A193-A194).

Demetrius Brown testified about his knowledge of the activities of other codefendants. In his direct testimony, Demetrius Brown characterized Davonte Lewis and Isaiha Palmer as enforcers who were involved in shootings (A197-A198). He was uncertain, however, whether those were at Lloyd's request (A197). Demetrius Brown identified Jarrell Brown as a drug dealer in the Newark area that was associated with Lloyd (A197-A198). It was also ascertained during Demetrius Brown's testimony that Galen Collins would run drugs for Lloyd (A198).

Jarrell Brown testified to having pled guilty to one count each of Racketeering, Conspiracy to Commit Racketeering, Drug Dealing in Heroin, Conspiracy Second Degree, and Possession of a Firearm By a Person Prohibited (A368-A370).

In regard to his involvement with Lloyd, Jarrell Brown testified that he both held and delivered heroin for Lloyd, that he would drop money off to Lloyd, and that he provided guns to Lloyd in exchange for heroin (A297-A326). Jarrell Brown indicated that he began dealing drugs with Lloyd in October, 2013 and that at the outset, Lloyd would front drugs to him and he would give a portion of the sales proceeds back to Lloyd (A298).

Jarrell Brown testified that when he needed drugs, he would contact Lloyd and that Lloyd would either have someone bring the drugs to him or Lloyd would direct him to Wilmington or Claymont to pick up heroin (A299-A308). Through direct testimony, the State established that the Claymont location was Wanda Lloyd's residence and that one of the Wilmington locations was Kimwanya Allen's residence (A303-A306). During Jarrell Brown's testimony, the State played a video of him handing over a substantial sum of cash to Lloyd at a gaming table inside Delaware Park (A319-A320). Jarrell Brown testified that money would be delivered to Lloyd at Delaware Park on some occasions, however, most instances of the two being together there were simply for the sake of gambling (A319-A320; A321-A322).

During his direct testimony, the State asked Jarrell Brown whether he agreed in his plea to tell the truth at the trial of any codefendants and whether

he had, in fact, testified truthfully (A373). Jarrell Brown answered these inquiries by the State in the affirmative indicating that he had previously spoken with investigators and that he had answered their questions as truthfully as he had just testified (A373). It is noteworthy that this exchange occurred well into Jarrell Brown's lengthy testimony, but prior to his credibility being attacked on cross-examination.

Steven Roscoe (hereinafter "Roscoe") testified that he met Lloyd in June, 2014 (A433). Roscoe stated that initially, he would obtain heroin from Lloyd through a middleman (A434). Roscoe stated that he would drive from Dover to 23rd Street in Wilmington where he would await Lloyd's arrival (A434-A435). Roscoe's testimony was that after Lloyd arrived, the middle man would collect the heroin from him and give it to Roscoe (A434-A435). By July, 2014, however, the middleman had been cut out and he was obtaining heroin directly from Lloyd (A436). Roscoe stated he would go to the Bear/Newark area to obtain heroin from Jarrell Brown (A436). He testified that he would not go into Wilmington unless he was giving Lloyd money (A436).

Through Roscoe's testimony, the State established that in the middle of October, 2014, Roscoe responded to the Popeye's in Wilmington to meet

Lloyd (A438). Upon arrival, he testified that he actually met with Brian Palmer who redirected him another location because of high police activity in the area (A438). Roscoe went on to state that at the second meet location he and Lloyd went into a gas station at which point Lloyd instructed Roscoe to go to meet Jarrell Brown to pick up the heroin (A2438). Roscoe stated that he went to Jarrell Brown's residence, picked up the drugs, and was arrested on the return trip to Dover (A438). Upon being arrested by DSP he agreed to cooperate with the authorities in their investigation into Lloyd's activities (A438).

On October 16, 2014, working as an informant, Roscoe agreed to reach out to Lloyd to set up a meeting (A439-A440). The purpose of this meeting was to pay an old drug debt and to purchase heroin from Lloyd (A440). This meeting became an involved undercover police investigation. Roscoe testified to meeting Lloyd in Bear where he was told to follow Lloyd's car (A440). Roscoe followed Lloyd on a circuitous route to Wilmington eventually meeting at a convenience store (A441). Inside the store, Roscoe provided Lloyd with money toward the drug debt (A441). According to Roscoe, Lloyd was suspicious of police activity so no heroin was exchanged; instead he was told that the heroin would be waiting for him in Dover (A441-

A442). Roscoe, and his police handlers responded to Dover awaiting further instructions from Lloyd. No one contacted Roscoe.

On October 17th Roscoe received a phone call from Lloyd telling him to go to the KFC in Dover (A442). Roscoe went to the location expecting to meet with Lloyd, however, Kareem Keyes, a codefendant unknown to Roscoe, delivered heroin to him (A442). Roscoe testified that after receiving the heroin, he turned it over to the police (A442).

During Roscoe's direct testimony, he informed the jury that he pled guilty to Drug Dealing in Heroin and Conspiracy Second Degree with the State recommending a sentence of three years' incarceration followed by probation (A442-A443). Furthermore, he testified that the heroin would be in individually stamped blue bags and to his knowledge it was always good heroin (A444). Like Jarrell Brown, prior to any cross-examination, Roscoe was asked whether his plea required him to testify truthfully at the trial of any co-defendant and whether he had in fact done so (A443). Roscoe, like Jarrell Brown, answered both questions in the affirmative (A443).

The State led off Lakenya Howard's (hereinafter "Howard") testimony by asking about her plea agreement (A474). Howard stated that she pled guilty to Conspiracy to Commit Racketeering and Conspiracy Second Degree

and that she was pending sentencing (A474-A475). The State next inquired whether Howard was present to testify truthfully (A474-A475).

In regard to Howard's conduct, she indicated that her home was searched by the police on October 30, but that she was not arrested and charged at that time (A475). Howard further testified that she was involved in a dating relationship with Lloyd (A475). Howard testified to having broken down bundles of heroin at her residence (A476). She further stated that she had accompanied Lloyd to Philadelphia on a number of occasions where he would occasionally meet with a Hispanic male known to her only as "Poppy" (A476). Howard testified that Lloyd would occasionally provide "Poppy" with unknown quantities of money (A476). Howard also testified to having gone to Delaware Park with Lloyd a multitude of times so that they could gamble (A479).

Howard's testimony indicated that she was occasionally called by the nickname "Michelle" and that she would on occasion refer to Lloyd as "Obama" (A475). Howard stated that Wanda Lloyd would occasionally use the nickname "Condoleeza" (A478). She quantified the nicknames as simply being "play nicknames" (A478; A483). Howard indicated that she and Lloyd

shared a common core group of friends comprised of Galen Collins, Wanda Lloyd, Rakeem Mills, and Brian Palmer (A477-A478).

She testified to having handled heroin a number of times and having sold it separate and apart from what she was doing with Lloyd (A479). She indicated that the heroin would come packaged in blue bags with a stamp (A479). Howard stated that the stamps varied and that on occasion, there would be no stamps on the bags (A479). Howard's further testimony in regard to the stamps on the heroin was that the heroin would come pre-stamped; that neither Lloyd nor his cohorts stamped the bags themselves (A479). Howard testified that to her knowledge she never handled or sold fake heroin (A479).

When Howard's house was searched on October 30, 2014, a number of cell phones were recovered by the police (A479). Howard explained that Lloyd would pay her cell phone expenses, but that when the bill would come due each month, he would have her get a new phone rather than keep the old phone (A479). When asked whether the phones were used as part of Lloyd's drug business, Howard simply stated that she used the phones to "talk to [Lloyd]" (A479).

Kareem Keyes (hereinafter "Keyes") testified to having known Lloyd for over ten years (A492). At the time he was involved with Lloyd, Keyes

was living in Dover (A492). Keyes testified to knowing Antoine "Flock" Miller from the street and knowing that he and Lloyd frequently spent time together (A496). Keyes also testified to having been incarcerated with Galen Collins, he was unaware of any relationship between Collins and Lloyd, however (A496-A497).

In regard to his dealings with Lloyd, Keyes stated that he contacted Lloyd about obtaining heroin for one of his friends (A494). Keyes advised that he set up a meeting with Lloyd in Wilmington to pick up the drugs (A494). Upon his arrival at the initially determined meet location, he was instructed to follow Lloyd to a second location (A494). Keyes advised that at the second location, he accompanied Lloyd inside a residence where Lloyd gave him drugs (A494). He testified that he received a "nice amount" of heroin on this particular date and that he did not pay Lloyd for it because it was "on consignment" meaning that he was to pay Lloyd back for the drugs later (A495).

Keyes' further testimony is that he provided the heroin to his friend in Dover, however, the friend changed his mind and returned the drugs to Keyes (A495). Keyes continued that he and Lloyd agreed to meet at Keyes' home located in Dover (A495). Keyes testified that during the meeting at his home,

Lloyd directed him to give the drugs to someone in Dover named Roscoe (A495).

Arrangements were subsequently made for Keyes to meet Roscoe at a restaurant in Dover to give him the heroin (A495). Keyes testified that, as previously arranged, he responded to the restaurant and delivered the heroin to Roscoe (A496). The delivery was made on October 17, 2014.

Keyes indicated that he resolved his pending charges by a plea agreement (A329). Under that plea agreement, he pled guilty to one count each of Conspiracy to Commit Racketeering and Drug Dealing (A497). Keyes testified that in exchange for his testimony at trial, rather than the State recommend the minimum/mandatory sentence, that the State would recommend time served followed by decreasing levels of probation (A497).

Brian Palmer, another of Lloyd's codefendants who was called over counsel's objection testified only to having pled guilty to Racketeering and five counts of Drug Dealing in Heroin (A503). Brian Palmer testified that he had been sentenced to 16 years in prison (A503-A504). On cross-examination, Brian Palmer testified that he was eligible to be sentenced as an habitual offender and that he "would have pled to murder if it was on there for 16 years" (A504). On re-direct, Brian Palmer testified that he did not commit

racketeering; that he pled guilty because the plea he accepted was the only plea that was offered (A504).

The final codefendant witness called by the State, Yasmeena Brown, testified to knowing Lloyd from a romantic relationship that the two had in October, 2014 (A583). Yasmeena Brown testified that aside from one occasion, she had not seen Lloyd deal with drugs (A584). Yasmeena Brown's testimony indicated that the only time that she had seen Lloyd with heroin at his sister Janelle's house (A584). Yasmeena Brown stated it was not a large quantity of heroin (A584).

Yasmeena Brown indicated that Lloyd was "in charge" and that he would "tell people what to do" (A590). In this regard, Yasmeena Brown testified that Lloyd had previously sent Brian Palmer to Philadelphia (A592). Yasmeena Brown also stated that Lloyd had asked a codefendant named Felicia Pagan to go to Philadelphia for him, however, she did not know whether Pagan ever in fact went to Philadelphia (A592).

Yasmeena Brown further testified that she did not recall seeing Lloyd with large quantities of cash (A592). Yasmeena Brown did, however, recall one instance where Brian Miller provided Lloyd a quantity of cash while the two were at a car wash on Philadelphia Pike (A592-A593). Yasmeena Brown

was unable to state how much money was exchanged (A593). The State further explored financial arrangements with Yasmeena Brown who testified that Lloyd had inquired whether she had a bank account, which she advised she did not nor did she open one (A594).

The State concluded its direct examination of Yasmena Brown by asking about her plea (A607). Yasmeena Brown testified to having pled guilty to one count of Conspiracy Third Degree, a lesser included offense of Conspiracy Second Degree and received a probationary sentence (A607-608). As with other codefendants, prior to Yasmeena Brown's credibility being impeached on cross-examination, the State asked whether she had testified truthfully to which she answered in the affirmative (A608).

The Police Officers' Testimony Pertinent to Lloyd

The law enforcement officers that were called by the State testified to their varying involvement in the investigation into Lloyd's activities. The testimony elicited from these officers ranged from the officers conducting simple traffic stops without being directly involved in the larger investigation; conducting physical surveillance; drafting and executing search warrants; engaging in direct or controlled purchases of contraband; and collecting

physical evidence. A number of officers' testimony also addressed the wiretap portion of the investigation.

The State first highlighted a number of shootings that occurred in the City of Wilmington between December, 2013 and January, 2014. Detective Michael Gifford (hereinafter "Detective Gifford") of the WPD was called in to testify regarding these shootings (A74-A77). Detective Gifford first testified about the December 20, 2013 shooting of Keith "Stemp" Brown (A74-A75). Detective Gifford testified that Davonte Lewis was ultimately arrested and charged with that shooting (A75).

Detective Gifford was next asked about a shooting that occurred on December 31, 2013 where Samuel Palmer was shot in the leg (A75-A76). Detective Gifford testified that Samuel Palmer was Blayton Palmer's brother (A76). Detective Gifford's further testimony was that the scene of the Samuel Palmer shooting was nearby to the scene of the Keith Brown shooting that had occurred only days earlier (A76).

The third shooting that Detective Gifford was asked about occurred on January 1, 2014 (A76). Detective Gifford testified that on that date, occupants of a gold minivan fired at another vehicle (A76). Per Detective Gifford's

testimony, Blayton Palmer and Rakeem Mills were both arrested and convicted in connection with that shooting incident (A76-A77).

Detective Gifford was next asked about an incident that occurred on January 16, 2014 (A78-A79). Detective Gifford testified that on that date, Wanda Lloyd's black minivan was involved in a high speed chase that began around 23rd and Pine Streets and ended in the 3000 block of West Street when the vehicle struck a parked car prompting the occupants to abandon the vehicle and flee on foot (A78-A80). Detective Gifford testified that Blayton Palmer was the driver in that incident and that Kimwanya Allen; Rakeem Mills; Galen Collins; William Anderson, and two other females were the occupants of the minivan (A79-A80).

Among the additional officers called by the State in reference to the January 16 chase incident was WPD Corporal Scott Gula (hereinafter "Cpl. Gula") (A103). Corporal Gula testified that he pursued Wanda Lloyd's minivan until it struck a parked car at which point the van's occupants exited and fled on foot (A103-A106). He testified that Rakeem Mills; Galen Collins; William Anderson' Sharnasia Watson; and two others were ultimately apprehended (A109-A110). Finally, he testified that to his knowledge, Lloyd

was uninvolved in this incident (A110-A111). Two firearms were also seized in connection with this incident (A110).

Wilmington Police Detective Randolph Pfaff (hereinafter "Detective Pfaff") testified to being a DEA task force officer (A142). Through his testimony, the State established that Detective Pfaff performed a firearms trace on the two recovered weapons (A144-A146). He was able to trace the weapons to the Philadelphia gun store depicted in the security footage presented to the jury through Detective Gifford's testimony (A145-A152).

Delaware State Police Sergeant Andrew Lloyd (hereinafter "Sgt. Lloyd") testified to having conducted undercover operations and surveillance in relation to the investigation into Lloyd's activities (A131-A132). Sergeant Lloyd indicated that the initial target of the investigation was Jarrell Brown (A134).

On recall, Sgt. Lloyd testified about his involvement in surveillance efforts that took place on October 13, 2014 (A418). He testified, based upon the wiretap, officers were ware that Roscoe would be travelling to Wilmington to drop off money to Lloyd (A418). Per Sgt. Lloyd, surveillance in Wilmington was attempted, but unsuccessful due to Lloyd's perceived counter-surveillance measures (A418). Surveillance was successfully

established when Roscoe arrived at Jarrell Brown's residence, however (A418). Surveilling officers indicated that they observed a drug transaction between Jarell Brown and Roscoe. Roscoe was followed out of the area and eventually arrested in Smyrna (A418).

Sergeant Lloyd also testified about surveillance activity on October 16, 2014 (A419). Sergeant Lloyd indicated that on this date, Roscoe was cooperating with the investigation (A419). With police assistance, Roscoe contacted Lloyd to set up another meeting to pay him money and to obtain heroin (A419). Sergeant Lloyd accompanied Roscoe to the meeting (A419). Upon arrival, Roscoe exited the car to speak with Lloyd and was instructed to follow him to a second location (A419). Sergeant Lloyd testified that a circuitous route was taken to the second location and that Lloyd remained on the phone with Roscoe during the entire drive so that they could identify law enforcement vehicles that were following them (A419-A420). Furthermore, he stated that Roscoe was ultimately instructed to park at a nearby fire station and that Lloyd and Roscoe continued on foot (A420). He testified that when Roscoe reentered the vehicle, he was instructed to go back to Dover; that the drugs would be there (A420). Sergeant Lloyd's testimony indicated that no

delivery of heroin took place on October 16, but it did in fact take place the next day (A420).

Special Agent Seamus Toolan (hereinafter "Special Agent Toolan") of the DEA testified to having been involved in the investigation into Andrew Lloyd and Jarrell Brown (A456). Special Agent Toolan advised that he conducted surveillance on Jarrell Brown on October 16, 2014 when Lloyd was to meet with Roscoe (A457). With respect to his involvement in surveillance efforts on October 16, Special Agent Toolan testified that he had begun surveilling a white minivan at the New Castle Wal-Mart and having followed the vehicle into Wilmington (A457). Special Agent Toolan stated that he was able to identify Lloyd in that minivan, but was unable to identify the other passengers (A457-A458). Per Special Agent Toolan's testimony, the vehicles ultimately parked in the area of New Castle Avenue at which point the occupants of the vehicles exited and walked out of view (A458).

Special Agent Toolan's testimony also covered what he believed to be counter-surveillance measures being employed by Lloyd (A458). Special Agent Toolan concluded that Lloyd was conducting counter-surveillance based upon the erratic driving, circuitous route taken, and communications between Lloyd and Roscoe (A458). Agent Toolan further couched his

opinion that Lloyd was conducting counter-surveillance by testifying that after parking, Lloyd and Brian Palmer exited their vehicle and were pointing out vehicles that they suspected of being law enforcement vehicles (A458-A459).

Wilmington Police Department Detective Joseph Leary (hereinafter "Detective Leary") testified to having executed a search warrant at Lloyd's Hobart Drive residence on October 30 (A692). As a result of that search warrant, Detective Leary recovered home security cameras, numerous cellular phones and a substantial quantity of cash (A693-A699). Detective Leary testified on cross-examination that it was not unlawful for an individual to possess multiple cellular phones nor was it illegal to have home security equipment (A702-A703). Detective Leary's cross-examination testimony revealed that no drugs were found at Lloyd's Hobart Drive residence (A703).

The Jury Instruction

Though no prayer conference was held in this case, the trial judge did solicit proposed jury instructions from the parties prior to the start of trial (A797-A799). On October 19, 2015, the State submitted the jury instruction that it wanted read for the lead charge of Racketeering (A794-A796). The initially proposed instruction specifically set forth the elements of the offense

and provided the definitions necessary to create an accurate statement of the law (A794-A796). Lloyd's counsel agreed with this instruction and requested that the trial judge use it (A767; A798). On October 28, the State submitted an alternative instruction to the court and requested that the alternate instruction be given instead (A797). Over counsel's objection, the trial judge ultimately gave the alternate instruction which set forth in pertinent part that to find Lloyd guilty of racketeering, the jury must find that the State has proven beyond a reasonable doubt that:

> "1.) Defendant was associated with an enterprise; AND 2.) Defendant conducted the enterprise through a pattern of racketeering activity, or Defendant participated in the enterprise's affairs through a pattern of racketeering activity; AND 3.) Defendant's conduct or participation in the pattern of racketeering activity was intentional. (A769)"

The instruction's definitions did little to illuminate the elements of the offense. In regard to "enterprise", the instruction stated only that "[u]nder the law, an "enterprise" includes a group of people associated in fact for a common purpose. (A769)" The instruction's comment upon pattern of racketeering activity stated that:

> ""[p]attern of racketeering activity" shall mean two or more felonies, including but not limited to felony Aggravated Possession or Drug Dealing, which are related to the enterprise's affairs, but are not so closely related to each other and connected in time and place to constitute a single act, yet the felonies were also not more than 10 years

apart. The underlying felonies are sometimes referred to as "predicate offenses" (A769)."

The instruction went on to define "conduct or participate in the enterprise's affairs" as "acting in a way that is necessary or helpful in carrying out the enterprises business or operations, including the predicate offenses (A769)."

The initially proposed instruction, by contrast gave a more expansive list of elements and sub-elements that must be proven for the State to prove the lead charge of Racketeering. Though the proposed instruction, like the one given, set forth that:

> "It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity" (A794).

In the proposed instruction, the major elements of racketeering were divided into sub-elements that must be proven beyond a reasonable doubt (A794-A795). In regard to enterprise, the proposed instruction required that the state prove three distinct elements beyond a reasonable doubt. The proposed instruction set forth that the State must prove that: 1) there was an ongoing formal or informal organization with some form of decision-making structure; 2) that although the enterprise may consist of various units, they must function as a continuing unit and that each person within the enterprise

has a role consistent with the decision-making structure; and 3) that the enterprise existed separate and apart from the pattern of racketeering activity (A794-A795).

The proposed instruction further required proof beyond a reasonable doubt that "the defendant committed at least two of the felony counts alleged in the indictment"; that the defendant's engagement in the racketeering activity was intentional; and that the predicate offenses were connected with each other by a common plan or scheme rather than being separate disjointed acts (A795).

ARGUMENT

I. BY DECLINING TO GIVE THE RACKETEERING INSTRCUTION REQUESTED BY LLOYD'S COUNSEL, THE TRIAL COURT COMMITTED REVERSIBLE ERROR BECAUSE THE INSTRUCTION GIVEN FAILED TO IDENTIFY AND DEFINE ESSENTIAL ELEMENTS OF THE OFFENSE. BECAUSE THESE ESSENTIAL ELEMENTS WERE NOT IDENTIFIED AND DEFINED FOR THE JURY, THE INSTRUCTION AS A WHOLE WAS NOT REASONABLY INFORMATIVE AND WAS THUS MISLEADING.

QUESTION PRESENTED

Did the trial judge commit reversible error where he refused to give the racketeering instruction requested by Lloyd's counsel and the instruction given was inadequate in light of the controlling law because it failed to identify and define essential elements of the offense charged?[2]

STANDARD AND SCOPE OF REVIEW

The Superior Court's denial of a requested jury instruction is reviewed *de novo*.[3]

MERITS OF THE ARGUMENT

It is settled law that a defendant has an unequivocal right to a correct statement of the substance of the law.[4] A trial judge's jury instructions will

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[2] A767-A769; A794-A796.
[3] *Gutierrez v. State*, 842 A.2d 650, 651 (Del. 2004).
[4] *Flamer v. State*, 490 A.2d 104, 128 (Del. 1984).

not be disturbed where they are "reasonably informative and not misleading, judged by common practices and standards of verbal communication."[5] To ascertain the jury instruction's propriety, the instruction must be viewed as a whole with no parts being "considered in a vacuum."[6] Where, however, the taint of an incorrect instruction is not purged by any other instruction, the other instructions are no longer relevant and the Court's scrutiny must focus on the deficient instruction.[7] Though some inaccuracies are to be expected, the Court will reverse if the instructions are so deficient that the jury's ability to intelligently perform its function to return a verdict is compromised.[8]

The Third Circuit Court of Appeals' pattern jury instruction sets forth that the an association in fact enterprise is one where the individuals have "associated together for a common purpose of engaging in a course of conduct."[9] To establish an association in fact enterprise, the Third Circuit Pattern Instruction follows the criteria outlined in *U.S. v. Riccobene* and requires proof beyond a reasonable doubt of the following elements: (1) the group has a purpose and longevity sufficient to carry out that purpose; (2) that

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[5] *Baker v. Reid*, 57 A.2d 103, 109 (Del. 1947).
[6] *Id.* at 109.
[7] *State v. Rosa*, 1992 WL 302295 at *5 (Del. Super. Ct. Sept.29, 1992).
[8] *Newman v. Swetland*, 338 A.2d 560, 562 (Del. 1975).
[9] *United States v. Riccobene*, 709 F.2d 214, 221-24 (3d Cir. 1983); 3d. Cir. Court of App. Pattern Jury Inst. 6.18.1962-C.

the group has a framework for carrying out its objectives; (3) that the members function as a continuing unit to achieve the group's common purpose; and (4) that enterprise exists separate and apart from the pattern of racketeering activity.[10] In regard to the latter element, it has been determined that an enterprise exists separate and apart from its pattern of racketeering activity where the enterprise is able to conduct its affairs without having committed the predicate offenses.[11] The purpose for requiring that the State to prove the foregoing elements is to ensure that a jury does not find a defendant accused of racketeering guilty by association.[12]

Because Delaware's racketeering statute mirrors its federal counterpart, this Court's construction of the statute follows interpretations by the federal courts.[13] In *Stroik*, this Court set forth that to prove existence of an "association in fact enterprise" for purposes of the racketeering statute, the State must prove:

> "(1) that the enterprise is an ongoing organization with some sort of framework for making or carrying out decisions; (2) that the various associates function as a continuing unit; and (3) that the enterprise be separate and apart from the pattern of activity in which it engages."[14]

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[10] 3d. Cir. Court of App. Pattern Jury Inst. 6.18.1962-C.
[11] *United States v. Lemm*, 680 F.2d 1193, 1200-01 (8th Cir. 1982); *Stroik v. State*, 671 A.2d 1335, 1341 (Del. 1996).
[12] *United States v. Pelullo*, 964 F.2d 193, 212 (3d Cir. 1992).
[13] *Stroik*, 671 A.2d at 1340.
[14] *Id.* at 1341.

Though addressing a challenge to sufficiency of the evidence, the *Stroik* Court's holding is critical to an accurate construction of the elements of racketeering for the purpose of instructing a jury. *Stroik* sheds light on 11 *Del. C.* § 1503(a) and the elements necessary to a finding of guilt for a violation of that statute.[15] Importantly, *Stroik* sets forth that a pattern of racketeering activity under Section 1503(a) requires that the predicate offenses be related and amount to a threat of continued criminal activity.[16]

In *State v. Lamborn*, the Superior Court granted the defendant's motion for postconviction relief where the instructions as to "presumption" were inadequate because they created "the mere likelihood that the charge was misunderstood."[17] In reaching its conclusion, the Superior Court framed the question as being whether the instruction is "fatal to the verdict, requiring that defendant's conviction be set aside".[18] Because the trial judge's "presumption" instructions did not adequately comport with its federal counterpart, the defendant's conviction was set aside.[19]

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[15] *Stroik*, 671 A.2d at 1340-42.
[16] *Id.* at 1342; *Kendall v. State*, 726 A.2d 1191, 1194 (Del. 1999).
[17] 1988 WL 97888, at *2-*3 (Del. Super. Ct. Aug. 31, 1988).
[18] *Id.* at *1.
[19] *Id.* at *2-*3.

In the case at bar, the jury instructions as to racketeering set forth only that:

> "1.) Defendant was associated with an enterprise; AND 2.) Defendant conducted the enterprise through a pattern of racketeering activity, or Defendant participated in the enterprise's affairs through a pattern of racketeering activity; AND 3.) Defendant's conduct or participation in the pattern of racketeering activity was intentional."

The instruction entirely failed to provide the elements necessary under *Stroik* to prove existence of an enterprise beyond a reasonable doubt. Instead, the instruction merely stated that "[u]nder the law, an "enterprise" includes a group of people associated in fact for a common purpose." The instruction made no mention of the requirements for decision-making framework; that the members function as a continuing unit; or that the enterprise exist separate and apart from its pattern of racketeering activity. Moreover, the cautionary instructions relating to accomplice testimony and witness conviction of crimes did little to ameliorate the risk of harm anticipated by the Third Circuit in *Pelullo*. In light of this failure, this Court's focus must remain on the adequacy of the racketeering instruction.[20]

The racketeering instruction fails to accurately state the law. The omission of the elements required to prove enterprise are fatal to the jury

[20] See, e.g. *Rosa*, 1992 WL 302295 at *5.

verdict as the instructions without those elements are not "reasonably informative [. . .], judged by common practices and standards of verbal communication."[21] The instruction initially proposed by the State and counsel, by contrast, provided the correct and accurate statement of the law. It set forth that to prove existence of an enterprise the State must prove that: (1) there was an ongoing organization with some type of structure for decision-making and controlling the group's affairs on an ongoing basis; (2) that the group function as a continuing unit; and (3) that the group exist separate and apart from its pattern of racketeering activity.[22]

When viewing the racketeering instruction in light of the remaining instructions, the deficiency is not corrected. The trial court's accomplice testimony and prior conviction instructions came long after the erroneous racketeering instruction and a litany of drug related instructions had been read. The deficiency in the racketeering instruction is thus fatal to the conviction as it allowed the jury to find Lloyd guilty of racketeering by simple virtue of having been affiliated with the codefendants that testified against him.[23] The

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[21] *Baker*, 57 A.2d 109.
[22] A794-A795
[23] A769 ("under the law, an enterprise includes a group of people associated in fact for a common purpose.")

jury's ability to intelligently perform its duty and return a verdict was, therefore, compromised.[24]

Because the trial court's jury instruction was defective, Lloyd respectfully requests that this Court vacate his racketeering and drug convictions as they are inextricably intertwined.

[24] *Newman*, 338 A.2d at 562.

II. THE STATE'S FAILURE TO PROVE THE EXISTENCE OF AN ASSOCIATION IN FACT ENTERPRISE BEYOND A RESAONABLE DOUBT IS FATAL TO THE JURY'S GUILTY VERDICT AS TO CRIMINAL RACKETEERING.

QUESTION PRESENTED

Is the evidence sufficient as to Lloyd's racketeering charge where the State failed to prove that the association in fact enterprise alleged at trial existed separate and apart from its pattern of racketeering activity?[25]

STANDARD AND SCOPE OF REVIEW

When considering the sufficiency of the evidence on appeal, this Court must determine whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[26]

MERITS OF THE ARGUMENT

Title Eleven sets forth that it is unlawful for any person "employed by, or associated with, any enterprise to conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity [. . .]."[27] For a defendant to be convicted of Racketeering, the State must prove beyond

[25] A767-A769; A794-A796.
[26] *Dixon v. State*, 577 A.2d 854, 857 (Del. 1989).
[27] 11 *Del. C.* § 1503(a).

a reasonable doubt that the defendant was employed by, or associated with an enterprise; that the defendant conducted or participated in the affairs of the enterprise through a pattern of racketeering activity; that the defendant's engagement in the racketeering activity was intentional; and that the felony offenses committed by the defendant were connected with each other by common plan, scheme, or motive, and not merely a series of separate acts.[28] Where the State proceeds under the theory that the enterprise was not a legal entity, but rather an association in fact, there are additional elements which must be proven.[29]

The elements necessary to prove existence of an association in fact enterprise under *Stroik* are that: "(1) the enterprise is an ongoing organization with some sort of framework for making or carrying out decisions; (2) that the various associates function as a continuing unit; and (3) *that the enterprise be separate and apart from the pattern of activity in which it engages.*"[30] The requirement that the State prove the existence of an entity in this manner circumvents the possibility that a jury will find a defendant guilty of

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[28] 11 *Del. C.* § 1503(2); *Kendall*, 726 A.2d at 1194; *Stroik*, 671 A.2d at 1341-42; *Pelullo*, 964 F.2d at 211; *Riccobene*, 709 F.2d at 221-22; *United States v. Turkette*, 452 U.S. 576, 583 (1981).

[29] *Stroik*, 671 A.2d at 1340-41.

[30] *Id.* at 1341 (citing *United States v. Pelullo*, 964 F.2d 193, 211 (3d Cir. 1992))(emphasis added).

racketeering by association.[31] That is not to say, however, that the existence of the enterprise cannot be inferred from proof of the pattern.[32]

In *Stroik*, the defendants operated First State Leasing, a car sales and leasing company intended to assist individuals with poor credit to acquire a vehicle.[33] The defendants, for a fee, would arrange for the prospective buyer to acquire a vehicle on which a third party was attempting to terminate the lease.[34] The ultimate goal of the arrangement was to have the prospective buyer take title to the vehicle on which the third party was attempting to terminate the lease.[35] In the end, the transaction between First State Leasing and their customers would create an installment sale of a car owned by the third party.[36] It was determined, however, that the defendants' clients never took clear title to the vehicles "sold" and a number were repossessed by the initial vehicle lessor.[37]

The defendants were charged, *inter alia*, with racketeering and conspiracy to commit racketeering.[38] The defendants were tried and

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[31] *Pelullo*, 964 F.2d at 212.
[32] *Id.*
[33] *Stroik*, 671A.2d at 1337.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*

convicted of several offenses including racketeering and conspiracy to commit racketeering.[39] On appeal, one of six arguments advanced was the sufficiency of evidence for the racketeering convictions. Ultimately, this Court found that the evidence was sufficient to sustain the conviction racketeering conviction.[40]

In affirming the racketeering conviction, this Court found that the State had adequately proved that an association in fact enterprise existed.[41] This Court found that First State Leasing had a "fully evolved decisionmaking framework" as evidenced by its operation of multiple offices, staff members, forms, and equipment.[42] Because First State Leasing expanded its business and planned for the future, the Court found that the continuing unit element was satisfied.[43] Finally, the Court found that the enterprise existed separate and apart from its pattern of racketeering activity in that First State Leasing could have operated as a legitimate business if not for the criminal schemes run through the company by the defendants.[44] In discussing the pattern of racketeering activity, this Court held that although the charges of defrauding

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[39] *Id.*
[40] *Id.* at 1340-42.
[41] *Id.* at 1340-41.
[42] *Id.* at 1341.
[43] *Id.*
[44] *Id.*

a secured creditor; insurance fraud; forgery second degree; and felony theft were part of only a single common scheme, the predicate offenses were related and posed a threat of continued criminal activity.[45]

In *United Staes v. Lemm*, a number of defendants were charged and convicted of racketeering in violation of the Federal Racketeer Influenced and Corrupt Organizations ("RICO Act") Act for their part in an insurance fraud scheme.[46] At trial it was determined that one defendant, an insurance adjuster began comingling arson with his legitimate adjusting business.[47] This defendant would recruit an individual to start an arson fire for the purpose of collecting insurance proceeds.[48] As part of the scheme, the defendant would tell the individual the manner in which to start the fire and what to tell investigating authorities.[49] The defendant would then pose as a legitimate insurance adjuster of an accidental fire and, on occasion, would also act as a private contractor to repair the fire damage in an effort to obtain a greater portion of the insurance proceeds.[50] On appeal, the defendant argued that the

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[45] *Id.* at 1342.
[46] *Lemm*, 680 F.2d at 1196.
[47] *Id.* at 1196-97.
[48] *Id.* at 1197.
[49] *Id.*
[50] *Id.*

Government did not adequately prove existence of an enterprise under the federal RICO Act.[51]

Ultimately, the defendants' convictions for racketeering were upheld as the Eighth Circuit found that the Government had adequately proven that an association in fact enterprise existed. Because all the conspirators shared the goal of setting arson fires for the purpose of defrauding insurance companies and since each conspirator carried out this purpose to an extent, the court found that the defendants had a common purpose.[52] The court found continuity of structure and personnel existed as the defendants' activities required a real estate purchaser, claims adjuster, repairman, an individual to prepare and set fires, and an individual to file the fraudulent claims.[53] Although there was some turnover with respect to the particular individuals filling the various roles, the continuity existed because there was an unchanging pattern of roles necessary to and utilized in carrying out the predicate offenses.[54] Lastly, the Eighth Circuit found that the enterprise existed separately and distinctly from the pattern of racketeering activity as

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[51] *Id.*
[52] *Id.* at 1199.
[53] *Id.*
[54] *Id.*

the arson ring could easily have carried out the lawful business of purchases and repairs to real estate aside from its criminal activities.[55]

In the present case, the State's evidence at trial is insufficient to sustain Lloyd's racketeering conviction. While it is true that Lloyd and his codefendants shared the common purpose of distributing sizeable amounts of heroin through Delaware, common purpose alone is insufficient to establish existence of an enterprise. The State also produced evidence and testimony sufficient to demonstrate structural continuity as Lloyd would obtain quantities of heroin from Philadelphia and other of his codefendants would hold and distribute the heroin at his direction. Though the State's evidence tended to prove common purpose and structural continuity, these two elements are insufficient to prove existence of an association in fact enterprise for purposes of racketeering.

Existence of an association in fact enterprise in the case at bar, therefore, hinges upon the State's ability to demonstrate that the enterprise had an existence separate and distinct from its racketeering activity. In this respect, the State's evidence failed. No evidence or testimony was elicited to demonstrate that Lloyd and his confederates had any purpose for associating

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[55] *Id.* at 1201.

aside from distribution of heroin throughout the state. The record is void of any evidence that Lloyd and his codefendants sought to accomplish some lawful purpose through their drug dealing activities. Unlike the *Stroik* and *Lemm* defendants, Lloyd and his codefendants are entirely unable to conduct their association's affairs through anything but illicit means.[56] Without the predicate offenses, the association formed by Lloyd and his codefendants are unable to pursue any lawful business objective. In the present case, the enterprise *is* the pattern of racketeering; it is not "separate and apart from the pattern of activity in which it engages."[57]

Because the State failed to prove that Lloyd and his codefendants were an association in fact enterprise with an existence separate and distinct from the alleged pattern of racketeering activity Lloyd's racketeering conviction cannot stand and must be vacated.

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[56] See, *Stroik*, 671 A.2d at 1341-42; *Lemm*, 680 F.2d at 1201.
[57] *Turkette*, 452 U.S. at 583.

III. IT WAS REVERSIBLE ERROR FOR THE TRIAL JUDGE NOT TO INTERVENE TO PREVENT THE PROSECUTOR FROM ELICITING DIRECT EXAMINATION TESTIMONY OF ACCOMPLICE WITNESSES SEEKING TO ASCERTAIN WHETHER THEY HAD TESTIFIED TRUTHFULLY IN ACCORDANCE WITH THEIR PLEA AGREEMENTS. THE TRIAL COURT FURTHER ERRED BY ALLOWING THE STATE TO PRESENT WITNESSES WHO WOULD TESTIFY ONLY TO HAVING PLED GUILTY.[58]

QUESTION PRESENTED

Did the trial court allow reversible prosecutorial misconduct where it failed to intervene *sua sponte* to prevent the State from asking multiple accomplice witnesses on direct examination whether they were testifying truthfully in accordance with their plea agreements?

STANDARD AND SCOPE OF REVIEW

A claim of prosecutorial misconduct is reviewed for plain error where there is no timely, contemporaneous objection to the prosecutorial misconduct.[59] Under this standard, the Court first reviews the record *de novo* to ascertain whether misconduct occurred.[60] If it is found that the prosecutor erred, this court must determine whether the error was so "clearly prejudicial

[58] A87; A582.
[59] *Spence v. State*, 129 A.3d 212, 218 (Del. 2015).
[60] *Torres v. State*, 979 A.2d 1087, 1094-95 (Del. 2009).

to the substantial rights as to jeopardize the fairness and integrity of the trial process.[61]

MERITS OF THE ARGUMENT

Prosecutors occupy a unique position as ministers of justice in the criminal justice process, and as such are tasked with securing justice, not simply convictions of accused defendants.[62] In light of a prosecutor's unique role, he must refrain from making improper or inflammatory remarks which go beyond the scope of the record evidence.[63] Similarly prosecutors are to avoid making comments which seem to assert personal knowledge of the case that has not been presented to the jury.[64]

This Court's review of prosecutorial misconduct is dependent on how the misconduct was approached in the proceedings below. If the defense raised a timely and specific objection to the alleged misconduct, or if the trial judge intervened *sua sponte* to address it, this Court reviews for harmless

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[61] *Id.*
[62] *Sexton v. State*, 397 A.2d 540, 544 (Del. 1979).
[63] *Id.*
[64] *Baker v. State*, 906 A.2d 139, 152 (Del. 2006), (citing *Elmer v. State*, 724 A.2d 625, 632 (1999)).

error.[65] If, however, no objection was raised by the defense, or the trial court did not intervene *sua sponte*, this Court reviews merely for plain error.[66]

The plain error standard sets forth that where an alleged error is obvious upon the face of the record, and so clearly prejudicial as to impugn the fundamental fairness of the trial process, a conviction may not stand.[67] Plain error, thus, is limited to those errors which are basic, serious, fundamental and which "clearly deprive an accused of a substantial right [. . .] or show manifest injustice."[68]

In assessing whether prosecutorial misconduct requires reversal, this Court applies a three part analysis.[69] The Court will look to (1) the closeness of the case; (2) the centrality of the issue affected by the alleged misconduct; and (3) the remedial steps taken to ameliorate the effects of the misconduct.[70] This three part analysis set forth in *Hughes* is not conjunctive, however, and one factor may carry greater weight than the others.[71] Moreover, in instances where an analysis under *Hughes* does not lead to a conclusion that a reversal

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[65] *Id.* at 148.
[66] *Kurzmann v. State*, 2006 Del. LEXIS 390, *11 (Del. 2006).
[67] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).
[68] *Id.*
[69] *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981).
[70] *Id.*
[71] *Baker*, 906 A.2d at 149.

is mandated, this Court may still reverse if the misconduct is *repetitive and serious doubt has been cast upon the trial process*.[72]

This Court has long held that prosecutors must refrain from misrepresenting or misusing evidence.[73] In *Hunter*, the defendant was charged with numerous drug-related offenses.[74] Hunter was under investigation by Delaware State Police for narcotics activities and was apprehended following a traffic violation.[75] While police were following the defendant's car, they observed a white ball being discarded from a driver's side window.[76] At the time of his apprehension, Hunter refused to answer any police questions and was in possession of an identification card that reported his identity as Anthony Jones.[77] When Hunter's fingerprints were run, the results indicated that Hunter's identity was in fact Scottie Brown, another alias.[78] Later FBI fingerprints returned Hunter's true identity.[79]

During summation, the prosecutor made several statements which were either disparaging to defense counsel or which were misrepresentations of the

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[72] *Id.*
[73] *Hunter v. State*, 815 A.2d 730, 735 (Del. 2002).
[74] *Hunter v. State* , 815 A.2d 730 (Del. 2002).
[75] *Id.* at 733.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*

evidence adduced during trial.[80] Defense counsel objected twice during the State's summation.[81] Following the defense's objection, the prosecutor withdrew the offending statement at which the objection was aimed and the Court admonished the prosecutor to confine his statements to the evidence.[82]

On appeal, the Court found that it is unacceptable for prosecutors to mislead the jury in regard to what the evidence shows.[83] The Court thus reaffirmed the longstanding precept that a prosecutor's expressions of personal belief or opinion are no more than a form of unsworn testimony that exploits the influence of his office.[84] The Court, in applying the *Hughes* analysis, determined that Hunter's was not a close case, the issues upon which the prosecutor's comments touched were not central, and that the trial judge appropriately remedied the objected to remarks.[85] The Court went further, however, to address the comments to which there was *no* objection and found that because the misconduct was repetitive, reversal was appropriate.[86]

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[80] *Id.* at 733-34.
[81] *Id.* at 734.
[82] *Id.*
[83] *Id.* at 736-37.
[84] *Id.* at 737, (quoting *Wainwrightv. State*, 504 A.2d 1096, 1100 (Del. 1986)).
[85] *Id.* at 737-38.
[86] *Id.* at 738.

In cases where accomplices are called to testify against a defendant, courts have varying approaches. In *People v. Williams*, the Michigan Court of Appeals affirmed the defndant's conviction notwithstanding the prosecutor's having asked an accomplice witness on direct examination whether the witness testified truthfully.[87] The *Williams* court ultimately held that reference to a plea agreement condition that a witness testify truthfully is not alone grounds for dismissal, though its admission should be with great caution and the prosecution must be careful not to use it in such a manner as to imply that the State has some special knowledge that the witness is testifying truthfully.[88]

In *Commonwealth v. Ciampa*, by contrast, the Massachusetts Supreme Court held that it was reversible error for the prosecutor, in the course of direct examination to repeatedly reference an accomplice witness' obligation to testify truthfully pursuant to a plea agreement.[89] Similarly, the Michigan Court of Appeals found improper bolstering where the prosecutor during the direct and re-direct examination, emphasized plea agreement provisions

[87] 333 NW2d 577 (Mich. Ct. App. 1983).
[88] *Id.*
[89] 547 NE2d 314 (Mass. 1989).

requiring truthful testimony at trial.[90] Likewise, in *People v. Rosales*, the Michigan court found that it was improper bolstering where the prosecutor in a robbery prosecution elicited testimony that a codefendant's plea to lesser offenses and a waiver of habitual criminal sentencing was in exchange for the accomplice witness' truthful testimony at trial.[91]

In the case at bar, the State paraded seventeen of Lloyd's co-defendants who had pled guilty to drug or racketeering related charges into court to testify against him. Many of these conspirators were asked in their direct testimony whether they were testifying truthfully in compliance with their various plea agreements. Specifically, Demetrius Brown, Jarrell Brown, Lakenya Howard and Yasmeena Brown were all asked during their direct examination whether they had testified truthfully. Under the circumstances present, this repetitive conduct by the State cannot be condoned.

Lloyd's case hinged upon the State being able to prove that an enterprise existed and that its affairs were conducted through a pattern of racketeering activity. Though there is little question that Lloyd was engaged in drug dealing activities, the remaining *Hughes* factors favor a finding of

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[90] *People v. Enos*, 490 NW2d 104 (Mich. Ct. App. 1988).
[91] 408 NW2d 140 (Mich. Ct. App. 1987).

prejudicial prosecutorial misconduct. The issue of whether defendants who had pled guilty to racketeering had testified truthfully directly encroaches on a determination that is strictly within the province of the jury.[92]

Counsel made multiple objections to the State putting witnesses before the jury to testify only that they had pled guilty to racketeering or related offenses.[93] Because evidence of an association in fact is critical to the jury's returning a guilty verdict for the racketeering charge, the prosecutors' inquiring whether certain codefendants who had pled guilty to racketeering had testified truthfully served to improperly vouch for the witness' credibility. Vouching in this manner improperly implies to the jury that the State is in possession of special information relating to the truthfulness of the witness' testimony. Furthermore, the State improperly bolstered the racketeering charge by putting witnesses before the jury to testify only to having pled guilty to racketeering without introducing any further evidence.

Early on in the sequence of codefendant testimony, counsel joined co-counsel's objection to the State parading in a litany of codefendant witnesses

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[92] *Chao v. State*, 604 A.2d 1351 (Del. 1992)(holding that the "jury is the sole trier of fact responsible for determining witness credibility, resolving conflicts in testimony and drawing any inferences from the proven facts.").
[93] A96; A174; A503.

to merely testify about their plea arrangements without adding any substantive value to the record. Notwithstanding this objection, the Court allowed the State to go forward in this manner. In response to counsel's objection to these witnesses, the trial judge simply stated that more evidence than the testimony of the plea is needed to prove racketeering. The harm caused by the State's use of codefendant testimony, however, was consummated when the trial judge gave a jury instruction defining a racketeering enterprise as "a group of people associated in fact".[94]

In light of the foregoing, the *Hughes* factors favor a finding of unfair prejudice resulting from the misconduct of the prosecutors in the questioning of accomplice witnesses. Alternatively, the State engaged in repeated misconduct by asking witnesses during direct examination whether they had testified truthfully and presenting witnesses to testify that they had pled guilty to racketeering without adding any additional relevant testimony to the record. As such, Lloyd respectfully requests that his racketeering conviction be vacated.

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[94] A769.

IV. THE CUMULATIVE EFFECT OF THE STATE BOLSTERING CODEFENDANT TESTIMONY PRIOR TO THEIR CREDIBILITY BEING IMPEACHED ON CROSS-EXAMINATION COMBINED WITH THE FATALLY DEFECTIVE JURY INSTRUCTION CONSTITUTES REVERSIBLE ERROR REQUIRING THAT LLOYD'S CONVICTIONS BE VACATED.

QUESTION PRESENTED

Does the cumulative effect of the State bolstering its accomplice witness testimony on direct examination combined with the faulty jury instruction constitute error requiring this Court to vacate Lloyd's convictions?[95]

STANDARD AND SCOPE OF REVIEW

A claim that the cumulative effect of all errors denied a defendant due process of law is reviewed for plain error.[96]

MERITS OF THE ARGUMENT

Where multiple errors occurring throughout the course of a trial cause a defendant prejudice, the cumulative error doctrine applies.[97] Cumulative error analysis takes all alleged errors and aggregates them to determine whether when taken together, their collective impact is such that the result of

[95] A87; A582; A767-A769; A794-A796.
[96] *State v. Howard*, 2014 WL 5804529, at *9 (Del. Super. Ct. Oct. 27, 2014).
[97] *Michaels v. State*, 970 A.2d 223, 231-32 (Del. 2009).

the trial can no longer be trusted.[98] The cumulative errors, thus, must have substantial and injurious effect or influence over the jury's verdict.[99]

In *Michaels*, this Court declined to reverse a conviction due to cumulative effect of the prosecutor commenting upon the fact that a codefendant had entered a guilty plea; that the State elicited testimony from the appellant that he and his codefendants were incarcerated; that the trial judge asked that the prosecutor conduct her questioning relating to a weapon in evidence from where she was standing; and for the State's use of a particular hypothetical in its summation.[100] In denying the relief requested, this Court held that there was no prejudice to the appellant in that the trial judge issued a curative instruction in regard to the opening statement and for the remaining errors, the appellant failed to articulate any actual prejudice that he suffered as a result of those errors.[101] This Court clearly held that or cumulative errors to be reversible, the "[c]umulative error must derive from multiple errors that caused "actual prejudice.""[102]

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[98] *Albrecht v. Horn*, 485 F.3d 103, 139 (3d Cir. 2007).
[99] *Id.*
[100] *Michaels*, 970 A.2d at 231-32.
[101] *Id.* at 231.
[102] *Id.*

This Court in *Wright v. State*, by contrast reversed the defendant's convictions for theft of services where the trial judge repeatedly admonished the *pro se* defendant to "move along" and made rulings that prevented the defendant from establishing an affirmative defense.[103] In finding that the cumulative effect of the trial judge's admonishments and rulings constituted cumulative error requiring reversal, this Court stated that although the errors standing alone may not have required reversal, their cumulative effect amount to prejudice requiring a new trial.[104]

In the case at bar, the State, on direct examination, asked multiple codefendant witnesses whether they had testified truthfully in accord with their plea agreements. Each of these defendants answered in the affirmative. There was no corrective instruction given by the trial judge following these multiple incidents of prosecutorial misconduct. Moreover, the trial judge, over objections by counsel allowed the State to continue parading codefendants before the jury to testify merely that they had pled guilty and were in some way connected to Lloyd. No substantive testimony that tended

[103] *Wright v. State*, 405 A.2d 685, 688-90 (Del. 1979).
[104] *Id.* at 690.

to prove any element of the racketeering charge was elicited from these witnesses.

In addition to the State's above-misconduct, the trial judge's jury charge provided an incomplete and misleading instruction as to the elements of racketeering. The instruction merely stated that a racketeering enterprise may be composed of a group of people associated in fact. This instruction is incomplete, inaccurate, and misleading to the extent that the jury's ability to intelligently perform its function is fatally impeded.

The cumulative effect of the State putting witnesses before the jury to testify that they had pled guilty to racketeering with Lloyd, the State bolstering the credibility of its accomplice witnesses prior to their being discredited on cross-examination, and the trial judge's defective jury instruction was that the jury was able to find Lloyd guilty of racketeering by having simply been associated with the codefendant witnesses. This cannot be fairly characterized as harmless error, it instead amounts to actual prejudice that deprived Lloyd of a fair trial requiring that Lloyd's convictions be vacated.

CONCLUSION

For the reasons set forth herein, Lloyd, through undersigned counsel respectfully requests this Honorable Court vacate his racketeering and drug related convictions as they are inextricably intertwined and remand the matter for a new trial.

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

STATE OF DELAWARE

VS.

ANDREW J LLOYD

Alias: See attached list of alias names.

DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

CRIMINAL ACTION NUMBER:
IN14-12-1715
RACKETEERING(F)
IN14-12-1878
RACKETEERING(F)
IN14-12-1731
TIER 5 POSS(F)
IN14-12-1734
CONSP. 2ND(F)
IN14-12-1737
CONSP. 2ND(F)
IN14-12-1740
CONSP. 2ND(F)
IN14-12-1743
CONSP. 2ND(F)
IN14-12-1746
CONSP. 2ND(F)
IN14-12-1749
CONSP. 2ND(F)
IN14-12-1752
CONSP. 2ND(F)
IN14-12-1755
CONSP. 2ND(F)
IN14-12-1733
POSS DRUG PARAP(M)
IN14-12-1736
TIER 5 POSS(F)
IN14-12-1739
TIER 5 POSS(F)
IN14-12-1745
TIER 5 POSS(F)
IN14-12-1748
TIER 5 POSS(F)
IN14-12-1751
TIER 5 POSS(F)
IN14-12-1754
TIER 5 POSS(F)
IN14-12-1741
DDEAL + AF(F)

COMMITMENT
Nolle Prosequi on all remaining charges in this case
APPROVED ORDER 1 May 5, 2016 9:57

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

SENTENCE ORDER

NOW THIS 18TH DAY OF NOVEMBER, 2015, IT IS THE ORDER OF THE COURT THAT:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IN14-12-1715- : TIS
RACKETEERING

The defendant is to pay a fine in the amount of $25000.00 of which $25000.00 is suspended (see attachment).

Effective October 30, 2014 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

AS TO IN14-12-1878- : TIS
RACKETEERING

The defendant is to pay a fine in the amount of $25000.00 of which $25000.00 is suspended (see attachment).

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

AS TO IN14-12-1731- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

AS TO IN14-12-1734- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1737- : TIS
CONSP. 2ND

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1740- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1743- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

AS TO IN14-12-1746- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1749- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1752- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1755- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1733- : TIS
POSS DRUG PARAP

- The defendant is placed in the custody of the Department of Correction for 6 month(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1736- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1739- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1745- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1748- : TIS
TIER 5 POSS

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1751- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1754- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Probation is concurrent to any probation now serving.

AS TO IN14-12-1741- : TIS
DDEAL + AF

- The defendant is placed in the custody of the Department of Correction for 3 year(s) at supervision level 5

- Suspended for 3 year(s) at supervision level 4
PLUMMER COMMUNITY CORRECTIONS CENTER

- Suspended after 6 month(s) at supervision level 4
PLUMMER CENTER

- For 18 month(s) supervision level 3

- Hold at supervision level 3

- Until space is available at supervision level 4
PLUMMER COMMUNITY CORRECTIONS CENTER

Probation is concurrent to any probation now serving.

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with ANY AND ALL CODEFENDANTS

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

Forfeit $ and items seized

NOTES

Defendant, while on probation for a drug felony, ran a huge drug racket, complete with stash house, counter-surveillance, "buffers", and so on. Defendant deserves the minimum mandatory here, 16 years. Beyond that, it remains to be seen whether Defendant should do more time. It seems clear, however, that if he were released soon, he would go back to drug dealing. That is what he knows, and the people he knows. Court encourages review under 11 Del C. 4217, when the time comes. Then Defendant may be ready to use his potential to do good.

THE FOLLOWING CRIMINAL ACTION NUMBERS WERE COMBINED
IN14-12-1732 Ddeal Tier 4 merged into IN14-12-1731 Tier 5 Poss
IN14-12-1735 Ddeal Tier 4 merged into IN14-12-1736 Tier 5 Poss
IN14-12-1738 Ddeal Tier 4 merged into IN14-12-1739 Tier 5 Poss
IN14-12-1744 Ddeal Tier 4 merged into IN14-12-1745 Tier 5 Poss
IN14-12-1747 Ddeal Tier 4 merged into IN14-12-1748 Tier 5 Poss
IN14-12-1750 Ddeal Tier 4 merged into IN14-12-1751 Tier 5 Poss
IN14-12-1753 Ddeal Tier 4 merged into IN14-12-1754 Tier 5

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

Poss
IN14-12-1742 Tier 1 Poss+AF merged into IN14-12-1741
Ddeal +AF

JUDGE FRED S SILVERMAN

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	.00
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	9000.00
VIDEOPHONE FEE ORDERED	27.00
DELJIS FEE ORDERED	27.00
SECURITY FEE ORDERED	270.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	405.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	
TOTAL	9,929.00

SURCHARGES

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

CRIM ACTION #	DESCRIPTION	AMOUNT
IN14-12-1715	VCF	4500.00
IN14-12-1878	VCF	4500.00

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

ANDREW LLOYD
X ROCK
ROCK LLOYD
ANDREW L LLOYD
ROCCO LLOYD

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

AGGRAVATING
PRIOR VIOLENT CRIM. ACTIVITY
LACK OF REMORSE
REPETITIVE CRIMINAL CONDUCT

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

STATE OF DELAWARE

VS.

ANDREW J LLOYD

Alias: See attached list of alias names.

DOB: 07/04/1983
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CASE NUMBER:
1410016737

CRIMINAL ACTION NUMBER:
IN14-12-1715
RACKETEERING(F)
IN14-12-1878
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CONSP. 2ND(F)
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CONSP. 2ND(F)
IN14-12-1752
CONSP. 2ND(F)
IN14-12-1755
CONSP. 2ND(F)
IN14-12-1734
CONSP. 2ND(F)
IN14-12-1731
TIER 5 POSS(F)
IN14-12-1739
TIER 5 POSS(F)
IN14-12-1745
TIER 5 POSS(F)
IN14-12-1748
TIER 5 POSS(F)
IN14-12-1751
TIER 5 POSS(F)
IN14-12-1754
TIER 5 POSS(F)
IN14-12-1736
TIER 5 POSS(F)
IN14-12-1733
POSS DRUG PARAP(M)
IN14-12-1741
DDEAL + AF(F)

COMMITMENT
Nolle Prosequi on all remaining charges in this case.
APPROVED ORDER 1 April 21, 2016 10:04

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

MODIFIED SENTENCE ORDER

NOW THIS 11TH DAY OF DECEMBER, 2015, IT IS THE ORDER OF THE COURT THAT: THE ORDER DATED November 18, 2015 IS HEREBY MODIFIED AS FOLLOWS:

The defendant is adjudged guilty of the offense(s) charged. The defendant is to pay the costs of prosecution and all statutory surcharges.

AS TO IN14-12-1715- : TIS
RACKETEERING

The defendant is to pay a fine in the amount of $25000.00 of which $25000.00 is suspended (see attachment).

Effective October 30, 2014 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

AS TO IN14-12-1878- : TIS
RACKETEERING

The defendant is to pay a fine in the amount of $25000.00 of which $25000.00 is suspended (see attachment).

- The defendant is placed in the custody of the Department of Correction for 25 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1737- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1740- : TIS
CONSP. 2ND

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1743- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1746- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1749- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1752- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1755- : TIS
CONSP. 2ND

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1734- : TIS
CONSP. 2ND

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1731- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1739- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1745- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1748- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1751- : TIS

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1754- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1736- : TIS
TIER 5 POSS

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

Level 5 shall run concurrent to any Level 5 now serving.

AS TO IN14-12-1733- : TIS
POSS DRUG PARAP

- The defendant is placed in the custody of the Department of Correction for 6 month(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to any probation now serving.

AS TO IN14-12-1741- : TIS
DDEAL + AF

- The defendant is placed in the custody of the Department of Correction for 3 year(s) at supervision level 5

- Suspended for 3 year(s) at supervision level 4
PLUMMER COMMUNITY CORRECTIONS CENTER

- Suspended after 6 month(s) at supervision level 4
PLUMMER CENTER

- For 18 month(s) supervision level 3

- Hold at supervision level 3

- Until space is available at supervision level 4

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

PLUMMER COMMUNITY CORRECTIONS CENTER

Probation is concurrent to any probation now serving.

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with ANY AND ALL CODEFENDANTS

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

Forfeit $ and items seized

NOTES

Defendant, while on probation for a drug felony, ran a huge drug racket, complete with stash house, counter-surveillance, "buffers", and so on. Defendant deserves the minimum mandatory here, 16 years. Beyond that, it remains to be seen whether Defendant should do more time. It seems clear, however, that if he were released soon, he would go back to drug dealing. That is what he knows, and the people he knows. Court encourages review under 11 Del C. 4217, when the time comes. Then Defendant may be ready to use his potential to do good.

THE FOLLOWING CRIMINAL ACTION NUMBERS WERE COMBINED
IN14-12-1732 Ddeal Tier 4 merged into IN14-12-1731 Tier 5 Poss
IN14-12-1735 Ddeal Tier 4 merged into IN14-12-1736 Tier 5 Poss
IN14-12-1738 Ddeal Tier 4 merged into IN14-12-1739 Tier 5 Poss
IN14-12-1744 Ddeal Tier 4 merged into IN14-12-1745 Tier 5 Poss
IN14-12-1747 Ddeal Tier 4 merged into IN14-12-1748 Tier 5 Poss
IN14-12-1750 Ddeal Tier 4 merged into IN14-12-1751 Tier 5 Poss
IN14-12-1753 Ddeal Tier 4 merged into IN14-12-1754 Tier 5

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

Poss
IN14-12-1742 Tier 1 Poss+AF merged into IN14-12-1741
Ddeal +AF

=======MODIFIED ORDER=======
And now this 11th day of December, 2015, the sentence order dated November 18, 2015 is hereby modified to reflect that as to CRA# 14-12-1715 the Defendant shall serve 25 years at Level 5, all other Level 5 time currently imposed is to run concurrently. All suspended Level 5 time is consecutive, and subject to being consecutively served upon violation of probation. All other terms and conditions previously imposed remain the same.

JUDGE MARY M JOHNSTON

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

SENTENCE CONTINUED:	
TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	.00
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	9000.00
VIDEOPHONE FEE ORDERED	27.00
DELJIS FEE ORDERED	27.00
SECURITY FEE ORDERED	270.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	405.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	
TOTAL	9,929.00

SURCHARGES

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

CRIM ACTION #	DESCRIPTION	AMOUNT
IN14-12-1715	VCF	4500.00
IN14-12-1878	VCF	4500.00

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

ANDREW LLOYD
X ROCK
ROCK LLOYD
ANDREW L LLOYD
ROCCO LLOYD

AGGRAVATING-MITIGATING

STATE OF DELAWARE
VS.
ANDREW J LLOYD
DOB: 07/04/1983
SBI: 00337996

CASE NUMBER:
1410016737

AGGRAVATING
PRIOR VIOLENT CRIM. ACTIVITY
LACK OF REMORSE
REPETITIVE CRIMINAL CONDUCT