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Case Number 654,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANTOINE L. MILLER,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 654, 2015
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

Elizabeth R. McFarlan
Chief of Appeals
ID #3759
Department of Justice
State Office Building
820 N. French Street, 7th Fl.
Wilmington, DE 19801
(302) 577-8500

DATE: August 11, 2016

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NATURE AND STAGE OF THE PROCEEDINGS

On October 30, 2014, police arrested the appellant, Antoine Miller, after the execution of a search warrant at his residence led to the discovery of drugs and a weapon.

On November 24, 2014, a New Castle County grand jury issued an indictment charging Miller and numerous codefendants with criminal racketeering and related charges. DI 1 (A3). On December 22, 2014, the grand jury issued a superseding indictment charging Miller with criminal racketeering (11 *Del. C.* § 1503(a)), conspiracy to commit criminal racketeering (11 *Del. C.* § 1503(d)), aggravated possession of heroin (16 *Del. C.* § 4752(3)) (2 counts), drug dealing in heroin (tier 4) (16 *Del. C.* § 4752(1)) (2 counts), second degree conspiracy (11 *Del. C.* § 512) (2 counts), possession of a firearm during the commission of a felony (11 *Del. C.* § 1447A), possession of a firearm by a person prohibited (11 *Del. C.* § 1448), possession of ammunition by a person prohibited (11 *Del. C.* § 1448), possession of marijuana (16 *Del. C.* § 4764(b)) and possession of drug paraphernalia (16 *Del. C.* § 4771). DI 6 (A2); A47-104.

On July 17, 2015, Miller moved to suppress evidence seized from his residence and for a *Flowers* hearing regarding the identity of the confidential informant in the related search warrant application. DI 30 & 32 (A6); A105-57.

The State responded to Miller's motions on August 10, 2015. DI 34 & 35 (A7); A158-203. On September 18, 2015, the Superior Court held an evidentiary hearing on Miller's motion to suppress. DI 37 (A7); A204-53. At the hearing, the Superior Court denied Miller's *Flowers* motion. *See* A245. On October 7, 2015, the Superior Court judge announced his intention to deny Miller's suppression motion and to later provide a written decision to that effect.[1] A8.

Beginning on October 20, 2015, the Superior Court conducted an eight-day joint jury trial for Miller and the remaining co-defendant, Andrew Lloyd.[2] DI 52 (A10). On October 28, 2015, prior to closing arguments, Miller made an oral motion for judgment of acquittal for charges based from October 16-17, 2014. *See* A585-87. Miller also moved for judgment of acquittal on the October 30, 2014 charges. A592. The Superior Court denied those motions. *See* A587.

On October 30, 2015, the jury found Miller guilty of conspiracy to commit racketeering, aggravated possession of heroin, 2 counts of second degree conspiracy, and possession of drug paraphernalia. DI 52 (A10). The jury acquitted Miller of the remaining charges against him. DI 52 (A10). On November 6, 2015, Miller renewed his motion for judgment of acquittal as to the

[1] No written decision was forthcoming.

[2] Other co-defendants indicted with Miller pleaded guilty prior to trial.

October 30th charge of aggravated possession. DI 58 (A11); A637-39. The State responded on November 13, 2015. DI 60 (A11); A643-45. On November 18, 2015, the Superior Court trial judge denied Miller's motion for judgment of acquittal and sentenced Miller to an aggregate of 20 years in prison, followed by decreasing levels of supervision.[3] DI 62 (A11); A647.

Miller filed a timely notice of appeal and an opening brief. This is the State's answering brief.

[3] *See* Sentence Order (Nov. 18, 2015) (attached to Op. Br.) (sentencing Miller to 20 years at Level V incarceration each for the conspiracy to commit racketeering and the aggravated possession counts to run concurrently).

SUMMARY OF THE ARGUMENTS

I. Appellant's arguments I and II are denied. The Superior Court did not abuse its discretion by denying Miller's motions to suppress and for a *Flowers* hearing. The warrant application, taken as a whole, contained sufficient evidence to provide a neutral magistrate to find that it was more likely than not that evidence of illegal activity would be at Miller and Pagan's residence at 810 West 9th Street.

II. Appellant's arguments III and IV are denied. The Superior Court properly instructed the jury regarding criminal racketeering and conspiracy to commit racketeering. The instructions adequately informed the jury that in order to find Miller guilty of racketeering, the jury had to find beyond a reasonable doubt that Miller had a relationship with an enterprise (a group of people with a common purpose), and that enterprise had to have been in operation long enough to show a pattern of members committing felonies in pursuit of the enterprise's purpose. Moreover, considered in the light most favorable to the prosecution, the State presented sufficient evidence for a rational trier of fact to find the existence of an enterprise and a pattern of criminal racketeering and that Miller was a participant.

III. Appellant's argument V is denied. The Superior Court did not err in allowing the prosecutors to ask the testifying co-defendants about the terms of their plea agreements. Any errors in five co-defendants testifying primarily to the terms

of their plea agreements and the lack of a specific limiting instruction regarding the plea agreements were harmless beyond a reasonable doubt, because the State presented overwhelming evidence of a criminal racketeering enterprise to distribute heroin.

IV. Appellant's argument VI is denied. The Superior Court did not abuse its discretion in denying Miller's motion for judgment of acquittal as to the charge of aggravated possession. The State is not required to present forensic analysis, because the jury can infer that the substance alleged to be heroin was, at the very least, a substance containing heroin.

V. Appellant's argument VII is denied. The Superior Court did not abuse its discretion in sentencing Miller well below the statutory maximum to two concurrent 20-year terms of incarceration.

STATEMENT OF FACTS

In late 2013 and early 2014, a series of shootings occurred in the City of Wilmington. Law enforcement attributed the rising violence to warring drug factions, one of which was led by Andrew Lloyd ("Lloyd") (aka "Rock"), Antoine Miller ("Miller") (aka "Flock") and Brian Palmer ("Palmer"). A338.

In January 2014, Wilmington Police and the FBI began investigating Andrew Lloyd after receiving information from a confidential informant ("CI") that Lloyd was selling large amounts of heroin in the City of Wilmington. As the investigation into Lloyd's network progressed, the Wilmington Police and FBI began sharing resources with the Delaware State Police and the U.S. Drug Enforcement Agency ("DEA") who were simultaneously investigating Jarrell Brown regarding a heroin dealing ring in the Newark, Delaware, area. A365, 367, 429.

Lloyd used various associates' homes to store, package and prepare heroin for distribution. A372-73. Some of Lloyd's associates referred to Wanda Lloyd's Claymont residence as "The White House," to Lloyd as "Obama," Galen Collins as "Biden," Lakenya Howard as "Michelle," and Wanda Lloyd as "Condaleeza." A310-11. Lloyd, Palmer and Miller would deliver drugs to Janelle Lloyd's house for safe-keeping. A411-12. Lloyd laundered his money by gambling. A313, 373-74, State's Ex 6. Palmer, Blayton Plamer, Zechariah Palmer and Isaiha Palmer

were the "muscle" of the organization. A338. Lloyd purchased cell phones and frequently changed numbers. A481. Lloyd directed others to facilitate drug transactions and, for the most part, distanced himself from the actual drugs. A479.

In the spring of 2014, Lloyd told Jarrell Brown that Miller would be taking over Lloyd's business. A382-83. The handover did not subsequently take place as Miller was shot multiple times by an unknown assailant. A382; A442-43; State's Ex. 15 (3/15/14 prison call from Galen Collins).

In October 2014, Yasmeena Brown, Lloyd's girlfriend, saw Lloyd and Miller together at Lloyd's sister Janelle's house, where a quantity of heroin was being packaged. A531. Yasmeena reported that Lloyd and Miller were together daily (A534) and that she had assisted Lloyd by collecting money from Miller. A537. During the same period, investigators frequently observed Lloyd in a maroon Dodge Caravan registered to Felicia Pagan ("Pagan"), Miller's wife. A427-28, A508

On October 16, 2014, Lloyd, Miller, Palmer and Steven Roscoe attempted a heroin delivery, but terminated it due to police presence. A421-22. During the aborted deal, Miller was seen in the back row of Lloyd's minivan staring down Detective Lloyd, who was working undercover in another vehicle. A421-22. Detective Lloyd believed Miller was checking for other vehicles tailing them.

A421-22. During the same aborted deal, Palmer drove Pagan's maroon Dodge Caravan for which Lloyd had paid the insurance. A428, A508. The next day Kareem Keyes delivered 130 bundles of heroin to Roscoe in the parking lot of the KFC restaurant in Dover. A444, A497, A501.

On October 30, 2014, police executed multiple search warrants. A557, A558. Police seized a total of $12,932 and a vehicle from Lloyd and Palmer's residence in Newark. A557-58. During the search of Miller and Pagan's residence at 810 West 9th Street, a detective observed Miller discard a handgun out the rear window of the bedroom that was subsequently located on the roof of the residence next door. A519; A547. A search of the residence yielded 1,428 bags of heroin and over $2,000 in cash. A515; A522; A557.

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING MILLER'S MOTION TO SUPPRESS EVIDENCE SEIZED PURSUANT TO A VALID SEARCH WARRANT.

Questions Presented[4]

Whether the Superior Court abused its wide discretion in denying Miller's motion to suppress evidence seized from 810 West 9th Street.

Standard and Scope of Review

This Court reviews the Superior Court's denial of a motion to suppress for abuse of discretion.[5] The Court examines the trial court's legal conclusions *de novo* for errors in formulating or applying legal precepts.[6] The trial court's factual findings will be upheld unless they are not supported by sufficient evidence and are clearly erroneous.[7]

Merits

Miller challenges the issuance of the warrant police obtained to search his residence at 810 West 9th Street where he was living with his wife, Felicia Pagan, arguing that the affidavit of probable cause included false allegations and the

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[4] This argument responds to Arguments III and IV of the Appellant's Opening Brief.

[5] *Lopez–Vazquez v. State*, 956 A.2d 1280, 1284–85 (Del. 2008) (citing cases).

[6] *Id.*

[7] *Id.* at 1285 (citing cases).

warrant failed to establish a sufficient nexus between any criminal activity and the residence. Op. Br. at 34. Specifically, Miller asserts that inaccurate facts included in paragraphs 84, 85, 87 and 88 of the affidavit of probable cause should have been stricken (Op. Br. at 37), and that the Superior Court should have considered newly added information developed at the evidentiary hearing that Pagan had purchased a 2006 maroon Dodge Caravan at a Philadelphia Parking Authority auction and that Detective Leary, at the time of the warrant application, was unaware of any criminal drug activity involving Pagan and Miller (Op. Br. at 38). Miller contends that once those changes were incorporated into the warrant application, the search warrant was not supported by probable cause.

Where police have conducted a search pursuant to a warrant, the defendant bears the burden of persuasion to show by a preponderance of the evidence that the warrant was not supported by probable cause.[8] In *Illinois v. Gates*,[9] the United States Supreme Court set forth a "totality-of-the-circumstances" approach for courts to determine whether probable cause exists to support the issuance of a search warrant. "The task of the issuing magistrate is simply to make a practical,

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[8] *See State v. Sisson*, 883 A.2d 868, 875 (Del. Super. 2005), *aff'd*, 903 A.2d 288 (Del. 2006); *cf. McAllister v. State*, 807 A.2d 1119, 1123 (Del. 2002); *Hunter v. State*, 783 A.2d 558, 560 (Del. 2001) (State bears burden of proof on a motion to suppress evidence seized without a warrant).

[9] 462 U.S. 213, 230-31 (1983).

common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place."[10] This Court has consistently applied *Gates*, requiring that an affidavit in support of a search warrant set forth sufficient facts from which a judicial officer can form a reasonable belief that an offense has been committed and that the property sought would be found in the particular place.[11]

Under *Franks v. Delaware*,[12] a defendant is entitled to a hearing when he has made a "substantial preliminary showing" that the police knowingly or "with reckless disregard for the truth" relied on a false statement to establish probable cause.[13] "[S]uppression is an appropriate remedy only if the false statement was included in the affidavit knowingly and intentionally or with reckless disregard for the truth, and the false statement was necessary to the finding of probable cause."[14] The Superior Court conducted an evidentiary hearing regarding Miller's motion to

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[10] *Id*. at 238.

[11] *E.g.*, *Fink v. State*, 817 A.2d 781, 787 (Del. 2003); *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000); *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989).

[12] 438 U.S. 154 (1978).

[13] *Id.* at 155-56.

[14] *Scott v. State*, 7 A.3d 471, 477 (Del. 2010) (citing *Franks*, 438 U.S. at 155-56).

suppress. A204-53. The trial court considered the sufficiency of the warrant application, after hearing the evidence regarding Miller's assertions of false or unreliable information. *See* A245-53. Assuming, without conceding, that all Miller's allegations of false information in the warrant resulted in the excision of that information, the warrant application provided sufficient facts for a neutral magistrate to find probable cause that contraband would be found at 810 West 9th Street.

"This Court has eschewed a hypertechnical approach to the evaluation of the search warrant affidavit in favor of a common-sense interpretation."[15] Consequently, the warrant application must be read as a whole, without isolating particular points.[16] Miller asserts that the Superior Court should not have considered anything other than paragraphs 81 through 89 of the probable cause affidavit, and of those paragraphs, Miller contends only paragraph 86 could be considered after the excision of uncorroborated or false information. But those nine paragraphs must be read in conjunction with the other eighty-nine paragraphs of the affidavit, which establish that Andrew Lloyd and Brian Palmer worked together to distribute heroin in Delaware. The affidavit makes clear that various

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[15] *Gardner*, 567 A.2d at 409 (quoting *Jensen v. State*, 482 A.2d 105, 111 (Del. 1984)).

[16] *Edwards v. State*, 320 A.2d 701, 703 (Del. 1974).

vehicles were used by Lloyd and Palmer to meet with customers to conduct drug deals.

Miller does not dispute the information in paragraph 81 that a 2006 maroon Dodge Caravan was registered to Felicia Pagan at 810 West 9th Street. Detective Joseph Leary (an affiant of the warrant affidavit) testified that paragraphs 82 and 83, averring that Lloyd used Pagan's Caravan to distribute and transport controlled dangerous substances, were based on observations by himself, Detective Lloyd, and the informant. A215; A220. In paragraph 86, also uncontested, Detective Leary attested that, in October 2014, he saw that same Dodge Caravan parked in Wilmington during a controlled heroin delivery with Lloyd. Paragraph 87 referred to Pagan having lived with a prior girlfriend of Lloyd, and that an informant took Lloyd and Palmer to Pagan's residence at 810 West 9th Street to pick up Lloyd's van. The informant saw Lloyd and Palmer at the door to the residence. Although Pagan had not lived in Claymont (according to her testimony at the hearing) she had lived with a prior girlfriend of Lloyd (although 10 years earlier in Edgemoor). Paragraph 89 cited to a confidential source (wiretap) that revealed Pagan had called Lloyd regarding possible retaliation by Diamere Fairley against Miller, who resided with Pagan at 810 West 9th Street, based on prior "violent encounters

involving firearms." The retaliation threat against Miller occurred on October 27, 2014, a day before the search warrant was signed.

The information recited above that excludes the challenged material was sufficient for a neutral magistrate to find probable cause to believe that Pagan was associated with Lloyd's heroin distribution organization and that her residence would likely contain contraband related to that enterprise. The Superior Court conducted a hearing at which Miller presented evidence challenging certain information in the warrant application. The warrant application, taken as a whole and without the disputed information, provided sufficient information to establish probable cause for the search. Consequently, the trial court did not abuse its discretion by denying Miller's motion to suppress evidence discovered at 810 West 9th Street pursuant to the search warrant.

Flowers[17] **motion**

Miller sought an *in camera* examination by the trial court of the confidential informant referenced in the affidavit of probable cause to "test[] the CI on the falsehoods revealed by Miller." Op. Br. at 42. During the evidentiary hearing on Miller's motion to suppress, the court addressed the *Flowers* issue and concluded:

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[17] *See State v. Flowers*, 316 A.2d 564 (Del. Super. 1973) (explaining when disclosure of an informant's identity by the prosecution may or may not be required).

> Right now looking at the evidence in the light most favorable to the defense, you've got some things that need to be explained or there are inferences to be drawn against the State concerning the three things that we just outlined, the trap and the vehicle's unavailability to be a – involved in a drug operation during the time in question. Chatting with the confidential informant, it would seem to me can either confirm what is already being presented in the record or it gives the confidential informant the opportunity to explain some things that right now are not explained.
>
> So, in terms of Flower's [sic], the Court is a little bit hard-pressed to see how that is even potentially helpful to the defense. A245.

The Superior Court was correct. There was nothing to be gained by having the judge question the confidential informant about averments in the warrant application. At the evidentiary hearing, Miller established that certain statements were inaccurate. Miller has failed to allege how any additional examination of the informant would have benefited him. At the hearing, Detective Andrew Lloyd testified that the "confidential source" in the warrant application referred to the wiretap information. A212. Detective Leary testified that the confidential informant referenced in the paragraphs at issue was the same person throughout. A221. Because there was sufficient information to sustain the probable cause finding without resorting to any uncorroborated information from the confidential informant, Miller was not prejudiced by the Superior Court's denial of his motion for a *Flowers* hearing.

II. THE SUPERIOR COURT PROPERLY INSTRUCTED THE JURY ON THE LAW REGARDING CRIMINAL RACKETEERING AND THE STATE PRESENTED SUFFICIENT EVIDENCE TO ESTABLISH THE ENTERPRISE ELEMENT BEYOND A REASONABLE DOUBT.

Questions Presented[18]

Whether the Superior Court's jury instruction regarding criminal racketeering adequately provided the jury with the correct legal standards.[19] Whether the State presented sufficient evidence that any rational trier of fact could have found the existence of an enterprise under the criminal racketeering statute beyond a reasonable doubt.

Standard and Scope of Review

This Court reviews the Superior Court's denial of a requested jury instruction *de novo*.[20] "Under settled Delaware law, trial courts have wide latitude in framing jury instructions, and their choice of wording will not be disturbed as long as the instruction correctly states the law and is not so confusing or inaccurate

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[18] This argument responds to Arguments III and IV of the Appellant's Opening Brief.

[19] Miller was acquitted of racketeering, but convicted of conspiracy to commit racketeering.

[20] *Perkins v. State*, 920 A.2d 391, 399 (Del. 2007) (quoting *Gutierrez v. State*, 842 A.2d 650, 651 (Del. 2004) (citing *Lunnon v. State*, 710 A.2d 197, 199 (Del. 1998))); *Keyser v. State*, 893 A.2d 956, 960 (Del. 2006); *Ayers v. State*, 844 A.2d 304, 309 (Del. 2004).

as to undermine the jury's ability to reach a verdict."[21] "A trial court's jury instruction is not a ground for reversal if it is reasonably informative and not misleading, judged by common practices and standards of verbal communication."[22]

"This Court ordinarily reviews a claim of insufficiency of the evidence 'to determine "whether any rational trier of fact, viewing the evidence in the light most favorable to the [prosecution], could have found the essential elements of the charged offense beyond a reasonable doubt."'"[23] Because Miller failed to raise this issue in a motion for judgment of acquittal in the Superior Court, his insufficiency of the evidence claim has been waived.[24]

Merits

Miller requested a 3-page jury instruction for criminal racketeering. *See* A654-56. The trial judge, over defense objections, gave a different instruction. *See* A618-19. Miller asserts that the Superior Court's instruction was erroneous

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[21] *Cabrera v. State*, 747 A.2d 543, 543 (Del. 2000).

[22] *Floray v. State*, 720 A.2d 1132, 1137 (Del. 1998) (quoting *Baker v. Reid*, 57 A.2d 103, 109 (Del. 1947), quoted in *Flamer v. State*, 490 A.2d 104, 128 (Del. 1983); and citing *Chance v. State*, 685 A.2d 351, 354 (Del. 1996) and *Probst v. State*, 547 A.2d 114, 119 (Del. 1988)).

[23] *Hardin v. State*, 844 A.2d 982, 990 (Del. 2004) (citations omitted).

[24] *See Monroe v. State*, 652 A.2d 560, 563 (Del. 1995) ("A claim of insufficiency of evidence is reviewable only if the defendant first presented it to the trial court, either in a motion for a directed verdict or a Rule 29 motion for judgment of acquittal. Absent any such motion, the claim is waived."); Del. Supr. Ct. R. 8.

because the instruction "failed to explain that an 'enterprise' had to be something 'separate and apart' from the heroin dealing conspiracies. Op. Br. at 48. Miller argues that the jury instructions used in *Stroik*,[25] and requested by Miller, better defined and explained the elements of racketeering. Op. Br. at 48. The jury instruction sought by Miller included language that required the State to establish the existence of an enterprise by proving that "some type of structure exists within the group for making decisions and that there is a mechanism for controlling the affairs of the group on an on-going, rather than an ad hoc, basis" and that "each person within the enterprise has a role consistent with the decision-making structure." A654. Miller's requested list of sub-elements was not required, however, because the law does not require proof of those factors.

Interpreting the federal RICO statute upon which Delaware's statute is based,[26] the United States Supreme Court, in *United States v. Turkette*, explained:

> In order to secure a conviction under RICO, the Government must prove both the existence of an "enterprise" and the connected "pattern of racketeering activity." **The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct.** The pattern of racketeering activity is, on the other hand, a series of criminal acts as

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[25] *See Stroik v. State,* 671 A.2d 1335 (Del. 1996).

[26] *Id.* at 1340 ("the most persuasive definitions of these terms ["enterprise" and "pattern of racketeering activity" in 11 *Del. C.* §§ 1502(3) and (5)] are ... provided by the various federal courts.").

> defined by the statute. The former **is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit**. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise.[27]

After *Turkette*, the federal circuits split regarding how much "structure" an association-in-fact enterprise must display to distinguish it from a RICO "pattern of racketeering." Some courts, like the Third Circuit in *United States v. Riccobene*,[28] required more proof of an enterprise's structure than others.[29] In *Stroik*, this Court approved the trial judge's reliance on the Third Circuit's interpretation of *Turkette* in *Riccobene* to determine whether the requisite showing of an association-in-fact enterprise had been made.[30] The Court, however, limited that approval "strictly to the facts of" *Stroik*.[31] Miller's reliance on *Stroik* is unavailing here.

Not only was this Court's decision in *Stroik* expressly limited to that case, but the case law interpreting the federal RICO statute has since been clarified,

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[27] *United States v. Turkette*, 452 U.S. 576, 583 (1981) (citing 18 U.S.C. § 1961(1) (1976 ed., Supp. III)) (emphasis added).

[28] 709 F.2d 214, 222 (3d Cir. 1983).

[29] *See United States v. Hutchinson*, 573 F.3d 1011, 1020-22 (10th Cir. 2009) (explaining circuit split).

[30] *Stroik*, 671 A.2d at 1341.

[31] *Id.*

rendering Miller's reliance on *Riccobene* misplaced. The United States Supreme Court, in *Boyle v. United States*, listed structural elements the government need *not* prove to establish an association-in-fact enterprise:

> We see no basis in the language of RICO for the structural requirements that petitioner asks us to recognize. As we said in *Turkette*, an association-in-fact enterprise is simply a continuing unit that functions with a common purpose. **Such a group need not have a hierarchical structure or a "chain of command"; decisions may be made on an ad hoc basis and by any number of methods—by majority vote, consensus, a show of strength, etc. Members of the group need not have fixed roles; different members may perform different roles at different times. The group need not have a name, regular meetings, dues, established rules and regulations, disciplinary procedures, or induction or initiation ceremonies.** While the group must function as a continuing unit and remain in existence long enough to pursue a course of conduct, nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence. Nor is the statute limited to groups whose crimes are sophisticated, diverse, complex, or unique; for example, a group that does nothing but engage in extortion through old-fashioned, unsophisticated, and brutal means may fall squarely within the statute's reach.[32]

After *Boyle*, Miller's assertions that the jury instruction used in *Stroik* was required cannot be sustained. As the Tenth Circuit noted in *Hutchinson*:

> [T]he Supreme Court announced a new test for determining whether a group has sufficient structure to qualify as an association-in-fact enterprise. Under this test, a group must have "[1] a purpose, [2] relationships among those associated with the enterprise, and [3]

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[32] *Boyle v. United States*, 556 U.S. 938, 948 (2009) (citing *Turkette*, 452 U.S. at 580) (emphasis added).

> longevity sufficient to permit these associates to pursue the enterprise's purpose." The Court explained the statutorily pertinent "purpose" by reference to its decision in *Turkette*, commenting that members of the group must share the "common purpose of engaging in a course of conduct." As to the relevant "relationship," the Court explained that not only must members of the group only share a common purpose, there also must be evidence of "interpersonal relationships" aimed at effecting that purpose—evidence that the members of the group have "joined together" to advance "a certain object" or "engag[e] in a course of conduct." As to longevity, the Court held that the group must associate on the basis of its shared purpose for a "sufficient duration to permit an association to 'participate' in [the affairs of the enterprise] through 'a pattern of racketeering activity,'" though "nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence[.]" The Court acknowledged that its structural requirements for an enterprise are modest, certainly far more modest than *Riccobene*'s ..., but stressed that this result is compelled by the plain language of Congress's statute: "This enumeration of included enterprises is obviously broad, encompassing [in RICO's plain language terms] '*any* ... group of individuals associated in fact.'" "The term 'any' ensures that the definition has a wide reach, ... and the very concept of an association in fact is expansive. In addition, the RICO statute provides that its terms are to be 'liberally construed to effectuate its remedial purposes.'"[33]

Thus, the Superior Court's decision to use the less complex and more clear jury instruction was proper. "Simply put, *after* Boyle, an association-in-fact enterprise need have no formal hierarchy or means for decision-making, and no purpose or

[33] 573 F.3d at 1019-20 (internal citations omitted).

economic significance beyond or independent of the group's pattern of racketeering activity."[34]

"A defendant has no right to have the jury instructed in a particular form. However, a defendant is entitled to have the jury instructed with a correct statement of the substantive law."[35] "A jury instruction must give a correct statement of the substance of the law,[36] and it must be "reasonably informative and not misleading, judged by common practices."[37] Even where there are some inaccuracies in an instruction, this Court will reverse only if the deficiency undermined the jury's ability "to intelligently perform its duty in returning a verdict."[38] Here, the trial judge correctly instructed the jury as to the substance of the law regarding criminal racketeering:

> In Delaware[,] it is unlawful for a person associated with an enterprise to conduct the enterprise's affairs [through] a pattern of

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[34] *Id*. at 1021 (citing *Boyle*, 556 U.S. at 947 (rejecting a proposed requirement that the jury be told an enterprise's structure must be "ascertainable" on the ground that such an instruction is "redundant and potentially misleading")). *See United States v. Hewes*, 729 F.2d 1302, 1311 (11th Cir. 1984) (concluding that an enterprise includes any group of persons associating formally or informally for the purpose of conducting illegal activity and finding sufficient proof of an enterprise based on the evidence also offered to prove the pattern of racketeering activity); *United States v. Bagaric*, 706 F.2d 42, 56 (2nd Cir. 1983) ("it is logical to characterize any associative group in terms of what it *does*, rather than abstract analysis of its structure.").

[35] *Claudio v. State*, 585 A.2d 1278, 1282 (Del. 1991).

[36] *Miller v. State*, 224 A.2d 592, 596 (Del. 1966).

[37] *Baker v. Reid*, 57 A.2d 103, 109 (Del. 1947).

[38] *Storey v. Castner*, 314 A.2d 187, 194 (Del. 1973).

> racketeering activity[,] or to participate in the enterprise's affairs through a pattern of racketeering activity. To find the defendant guilty of criminal racketeering, you must find that each of the following elements has been proven beyond a reasonable doubt:
>
> One, defendant was associated with an enterprise; and, two, 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, three, defendant's conduct or participation in the pattern [of] racketeering activity was intentional.
>
> Under the law, an enterprise includes a group of people associated in fact for a common purpose. Pattern of racketeering activity shall mean two or more felonies including, but not limited to, felony aggravated possession or drug dealing which are closely related to the enterprise's affairs but are not so closely related to each other as connected in time and place to constitute a single act, yet the felonies were not more than ten years apart. The underlying felonies are sometimes referred to, as I said, as predicate offenses.
>
> Conduct or participate in an enterprise's affairs means acting in a way that is necessary or helpful in carrying out the enterprise's business or operations, including predicate offenses. Intentionally as used in the criminal racketeering law means it was the defendant's conscious object and purpose to do the acts that constitute the alleged pattern of racketeering activity. (A619).

These instructions adequately informed the jury that an enterprise was a group of people with a purpose, that Miller must have a relationship with the enterprise, and the enterprise had to be in operation long enough to show a pattern of members

committing felonies in pursuit of the enterprise's purpose.[39] In contrast, the jury instruction sought by Miller, relying on pre-*Boyle* cases, included elements the State was not required to prove. In fact, the Third Circuit has acknowledged that "[t]o the extent that this holding [in *Riccobene*] is inconsistent with *Boyle*, it is no longer good law."[40] Moreover, Miller was acquitted of criminal racketeering, but convicted of conspiracy to commit racketeering. Miller has not raised any claim that the jury instructions regarding the conspiracy element were flawed. *See* A619-20 (instructions as to conspiracy).

Sufficiency of the evidence

Should this Court review Miller's claim of insufficient evidence of the conspiracy to commit criminal racketeering, he is not entitled to relief. The evidence overwhelmingly demonstrated that Miller's co-defendant Lloyd participated as a member (the leader) of a group with a common purpose (an enterprise) to illegally distribute heroin and hide the proceeds of that illegal activity. The evidence also supported a finding that Miller intended to promote the commission of criminal racketeering, that he agreed with one or more persons to

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[39] *See Boyle*, 556 U.S. at 946 ("From the terms of RICO, it is apparent that an association-in-fact enterprise must have at least three structural features: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose.").

[40] *United States v. Bergrin*, 650 F.3d 257, 266 n.5 (3d Cir. 2011).

participate in the felonious conduct, and that one or more of those conspirators committed an overt act in pursuance of the conspiracy.[41] The racketeering instruction provided sufficient guidance that a reasonable jury could find that Lloyd and his associates, including Miller, had a common purpose, relationships and longevity as required for an associate-in-fact enterprise.[42] The State submitted ample evidence of qualifying predicate offenses to establish a pattern of racketeering.

Even if this Court accepted the sub-elements sought by Miller as essential elements of criminal racketeering, the State still met its burden. The State presented evidence that Miller conspired with Lloyd and others with the common purpose of dealing heroin in Delaware. Witnesses testified that they acted at the direction of Lloyd. Cars and weapons were procured by associates for use by the group. Association members' homes were used to package heroin for sale. Miller was present at one of those homes while heroin was being re-packaged. A411-12; A531. Police observed Miller in a white minivan with Lloyd during an undercover drug deal that was terminated when Lloyd identified law enforcement unmarked vehicles in the area. A421-22. Miller stared at Detective Lloyd in the unmarked

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[41] *See* 11 *Del. C.* § 1503(d).

[42] *See, e.g.*, *United States v. Kamahele*, 748 F.3d 984, 1003 (10th Cir. 2014) (applying the *Boyle* analysis to claims of deficient jury instructions in a criminal RICO case).

vehicle. A422; A427. Detective Lloyd also testified that the red Dodge Caravan was in the area on that same date. A427. Detectives Lloyd and Leary also saw the Dodge Caravan parked in front of Miller and Pagan's residence. A428. Police had discovered that Lloyd paid for the insurance on Pagan's vehicle. A428.

The State presented evidence of a hierarchy and relationships that went beyond the pattern of criminal racketeering. The predicate offenses occurred over time, demonstrating the continuing nature of the enterprise. In addition, the evidence showed the enterprise existed apart from the listed offenses that established the pattern of racketeering. Regardless of the standard used (*Riccobene* or *Boyle*), when considered in the light most favorable to the State, the evidence presented at trial was such that a rational trier of fact could have found all the elements of conspiracy to commit criminal racketeering beyond a reasonable doubt.

III. ANY ERROR IN ADMITTING CERTAIN CO-DEFENDANTS' TESTIMONY LIMTED TO THE TERMS OF THEIR PLEA AGREEMENTS WAS HARMLESS BEYOND A REASONABLE DOUBT.

Question Presented[43]

Whether the trial court erred by allowing the State to present the testimony of co-defendants limited to little more than the terms of their plea agreements in this case.

Standard and Scope of Review

This Court reviews a trial court's decision to admit evidence for abuse of discretion.[44] "An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances, or so ignored recognized rules of law or practice to produce injustice."[45] To the extent the admissibility of evidence rests on a question of law, this Court reviews that claim *de novo.*[46]

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[43] This argument responds to Argument V of the Appellant's Opening Brief.

[44] *Hicks v. State*, 913 A.2d 1189, 1197 (Del. 2006); *Kiser v. State*, 769 A.2d 736, 739 (Del. 2001); *Capano v. State*, 781 A.2d 556, 607 (Del. 2001); *Williamson v. State*, 707 A.2d 350, 354 (Del. 1998).

[45] *Floudiotis v. State*, 726 A.2d 1196, 1202 (Del. 1999) (internal quotation and alteration marks omitted).

[46] *Gattis v. State*, 955 A.2d 1276, 1281 (Del. 2008).

Merits

Miller asserts that five testifying co-defendants were called for the sole purpose of admitting their plea agreements into evidence. Op. Br. at 50. Miller objected to the first of these witnesses, Davonte Lewis, based on lack of relevance and that presenting a witness who pleaded guilty to criminal racketeering "kind of bolsters the racketeering case against my defendant." A286. The trial judge overruled the objection, finding that someone pleading guilty to racketeering with another person did not "prove the racketeering by itself," but that the fact was "a piece of that picture." A286. Miller renewed his objection the next day to "parading co-defendants in the courtroom and telling what the pleas are and nothing being drawn further from the defendant." A315. Miller objected again when co-defendant Brian Palmer was called to testify. A505. At that point, the trial judge explained his reasoning for allowing the testimony as follows:

> [T]o the extent that somebody came in and said I pled guilty to doing racketeering with Lloyd, that has some probative value in terms of whether the two of them were doing racketeering together. The guy took a felony and probably a prison sentence as result of that admission. If you want to cross-examine him about it to suggest, as you have, that he had ulterior motives, that's fine.... (A505).

The five witnesses' testimony Miller cites as objectionable on appeal did not all simply testify that they had pleaded guilty to criminal racketeering. Davonte Lewis testified that: "Stemp" identified him as the person who shot someone

(A284); he was in "Gilly's" (Galen Collins') car when he was arrested on January 14, 2014 (A285); and Lloyd suggested Joseph Benson as an attorney when Lewis called him after getting arrested (A285). That testimony tied Lewis to Lloyd, as well as to a predicate offense alleged as a part of the pattern of racketeering.

Zechariah Palmer's testimony was limited almost exclusively to his plea agreement. A306. He identified his plea agreement and acknowledged that the charges to which he pleaded, first degree reckless endangerment and possession of a firearm, stemmed from a shooting at 118 West 26th Street. A306. Zechariah testified that he also pleaded guilty to conspiracy to commit criminal racketeering and that he had not agreed to testify. A306. On cross-examination, Zechariah agreed that he took a plea just to resolve his two pending cases. A306.

Blayton Palmer's direct testimony was similarly limited. Blayton agreed that he pleaded no contest to possession of a firearm by a person prohibited and guilty to drug dealing in heroin, disregarding a police officer, second degree conspiracy and conspiracy to commit racketeering. A315-16. The prosecutor elicited that: on New Year's Day Blayton was with Rakeem Miller on 27th Street; and, on January 16, 2014, Blayton was the driver in the car chase. A315. On cross-examination, Blayton testified that Lloyd was not involved in the conduct for

which Blayton was charged and that he received the minimum mandatory amount of jail time for the weapons charge (5 years) to resolve all his cases. A316.

Rakeem Mills' direct testimony was the most limited of the group. A324. Mills simply testified that State's Exhibit 12 was his plea agreement, he signed it in the presence of his attorney, and he pleaded guilty to one count of conspiracy to commit racketeering. A324. On cross-examination, Lloyd's counsel elicited that Mills took the plea "to what I did" and not "to avoid being habit and get 15 years." A324. When asked if he was affiliated with Mr. Lloyd, Mills stated, "It's my family." A324.

Brian Palmer, who pleaded guilty to criminal racketeering and five counts of drug dealing (heroin), only testified about his plea agreement on direct examination (A505-06), but when cross-examined by Lloyd's counsel he testified that "it could have said three murder charges on [the plea agreement] that I knew I was not there for, I'd have took my time, read it, pled to it, because I didn't want life in jail." A506. On re-direct, Brian stated that "I didn't do racketeering either." A506.

Miller did not cross-examine any of the five witnesses except Brian Palmer, who was only asked if, at his plea hearing, the State had referred to him as the number two in Mr. Lloyd's organization. A506. Neither Lloyd nor Miller

objected to the admission into evidence of the co-defendants' plea agreements themselves. Neither requested limiting instructions. At the close of evidence, the trial judge instructed the jury on accomplice testimony followed immediately by impeachment by prior conviction:

> You have heard accomplice testimony. For obvious reasons, an alleged accomplice's testimony should be examined by you with suspicion and great caution. This rule becomes particularly important when there is nothing in the evidence, direct or circumstantial, to corroborate the alleged accomplice's accusations that a defendant participated in a crime.
>
> Without corroboration, you should not find defendant guilty unless, after careful examination of the alleged accomplice's testimony, you are satisfied beyond a reasonable doubt that it is true and that you may safely rely upon it. Of course if you are satisfied, you would be justified in relying upon it, despite the lack of corroboration, and in finding defendant guilty.
>
> You may consider evidence that a witness was previously convicted of a felony or a crime involving dishonesty for the sole purpose of judging that witness' credibility or believability. Evidence of a prior conviction does not necessarily destroy or damage the witness' credibility. And it does not mean that the witness has testified falsely. It simply is one of the circumstances you may consider in weighing the testimony of that witness. (A779)

The trial court did not instruct the jury regarding the proper limited purposes for admission of the plea agreements and how to consider that evidence.[47]

[47] *See Purnell v. State*, 106 A.3d 337, 350 (Del. 2014) (explaining the requirement of a limiting instruction regarding plea agreements).

This Court, in *Allen v. State*, held: "During the direct examination of a co-defendant, a prosecutor may elicit testimony regarding that co-defendant's plea agreement and may actually introduce that agreement into evidence."[48] The Court restricted the admission of the plea agreement itself into evidence "for the limited purpose of allowing the jury to accurately assess the credibility of the co-defendant witness, to address the jury's possible concern of selective prosecution or to explain how the co-defendant witness has first-hand knowledge of the events about which he or she is testifying."[49] *Allen* did not address any limitations on the testimony of the co-defendant, but suggested that a limiting instruction is appropriate. However, in *Purnell*, the Court found that if a co-defendant testifies and is subject to cross-examination, but the plea agreement itself is not offered into evidence, his counsel is not required to request a cautionary instruction.[50]

Here, the trial judge found relevance to the admission of the limited testimony regarding the co-defendants' plea agreements to establish that they were connected to the criminal racketeering enterprise with Lloyd and Miller.[51] A505.

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[48] 878 A.2d 447, 450-51 (Del. 2005).

[49] *Id.* at 451.

[50] *Purnell*, 106 A.3d at 351.

[51] *Cf. State v. Phillips*, 2015 WL 516815, at *2-3 (Del. Super. Ct. Sept. 2, 2015) (finding certifications of convictions and guilty pleas of other gang members admissible in prosecution for gang participation to prove a pattern of criminal gang activity).

Although courts have consistently found that plea agreements cannot be used as substantive evidence to prove the guilt of another,[52] the prosecutors here did not simply enter the plea agreements into evidence. Instead, the co-defendants were called as witnesses and made available for cross-examination. In cross-examining the witnesses, Lloyd elicited testimony from several of the co-defendants that they would have pleaded guilty to anything to obtain the benefit of the agreements.[53] The State presented evidence of the substantive crimes committed by the co-defendants through other witnesses, video surveillance and wiretap evidence. By presenting the jury with live witnesses who informed the court that they conspired with Lloyd and Miller and participated in the racketeering, the State provided Miller the opportunity to ask the witnesses about their relationship with him and to explain or deny any participation with him in criminal activities.

Miller has not alleged prejudice beyond a general complaint that the plea agreement testimony bolstered the State's case. *See* Op. Br. at 51. Any error at Miller's trial was harmless beyond a reasonable doubt. Although the trial court failed to *sua sponte* give a cautionary instruction regarding the admission of the

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[52] *See Allen*, 878 A.2d 450 & n.4 (citing *Kirby v. United States*, 174 U.S. 47, 55-56 (1899)).

[53] *Cf. United States v. Tocco*, 200 F.3d 401, 418 (6th Cir. 2000) (finding admission of certified convictions of co-defendants permissible in re-trial because "Tocco's co-defendants ... had the opportunity to show the jury that he was not involved in their crimes").

plea agreements, the jury heard the cautionary instruction regarding accomplice testimony and the relevance of prior convictions of witnesses. "The established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a properly instructed jury."[54]

The State presented overwhelming independent evidence that Lloyd managed a large heroin distribution ring and that Miller aided Lloyd in that business. The co-defendants' testimony was corroborated by physical evidence, police testimony, video surveillance, recorded telephone calls, and Lloyd's statement to police. The prosecutors, by offering the testimony of uncooperative co-defendants, addressed any concerns the jury may have had about selective prosecution and allowed Miller to argue that none of the co-defendants' testimony was credible based on the beneficial plea deals.

[54] *Hoffa v. United States*, 385 U.S. 293, 311 (1966).

IV. THE SUPERIOR COURT PROPERLY FOUND THAT THE STATE HAD PRESENTED SUFFICIENT EVIDENCE TO ALLOW THE JURY TO CONSIDER THE AGGRAVATED POSSESSION OF HEROIN CHARGE AGAINST MILLER.

Question Presented[55]

Whether the Superior Court properly found that the State had presented sufficient circumstantial evidence such that jury could find beyond a reasonable doubt that the 1,428 baggies in Miller's possession contained heroin.

Standard and Scope of Review

This Court reviews "the denial of a motion for judgment of acquittal *de novo* to determine 'whether *any* rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt.'"[56]

Merits

Miller moved for judgment of acquittal as to the October 30, 2014 aggravated possession of heroin (5 grams or more) charge that resulted from the seizure of 1,428 baggies of a substance packaged consistently with other heroin in this case, because the State had failed to offer scientific proof that the material

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[55] This argument responds to Argument VI of the Appellant's Opening Brief.

[56] *Seward v. State*, 723 A.2d 365, 369 (Del. 1999) (citing *Robertson v. State*, 596 A.2d 1345, 1355 (Del. 1991); *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995)).

seized was, in fact, heroin and the remaining circumstantial evidence was insufficient to prove beyond a reasonable doubt that it was heroin. A637-39. The State filed a response opposing the motion (A643-45), and the Superior Court denied Miller's motion prior to sentencing. A647. The Superior Court properly found "sufficient circumstantial evidence had been presented from which the jury could conclude beyond a reasonable doubt that the substances in question were heroin, and there was enough of it, so that the statutory limits were satisfied." A647.

"The well-established rule in Delaware is that direct evidence is not necessary to establish guilt, because 'guilt may be proven exclusively through circumstantial evidence since this Court does not distinguish between direct and circumstantial evidence in a conviction context.'"[57] This Court has found "no reason to depart from settled Delaware law ... and thereby carve out an exception in drug cases requiring expert testimony to establish whether the substance is in fact an illegal drug."[58]

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[57] *Seward*, 723 A.2d at 369 (Del. 1999) (quoting *Davis v. State*, 706 A.2d 523, 525 (Del. 1998) (per curiam)). *Accord Washington v. State*, 2009 WL 3823211, at *3 (Del. Nov. 16, 2009); *Perkins v. State*, 2003 WL 356785, at *1 (Del. Feb. 13, 2003).

[58] *Id.* at 370.

Here, Janelle Lloyd testified that Miller accompanied Andrew Lloyd to deliver bundles of heroin to her home for her to store. A411-12. On October 16, 2014, police observed Miller in a white minivan with Lloyd during an undercover drug deal that was terminated when Lloyd identified law enforcement unmarked vehicles in the area. A421-22. Miller stared at Detective Lloyd in the unmarked vehicle. A422; A427. Detective Lloyd also testified that the red Dodge Caravan was in the area on that same date. A427. Detectives Lloyd and Leary also saw the Dodge Caravan parked in front of Miller and Pagan's residence. A428. Police had discovered that Lloyd paid for the insurance on Pagan's vehicle. A428.

Steven Roscoe testified that Lloyd usually packaged his heroin for sale with 13 small plastic bags per bundle. A446. Blue wax paper bearing various stamps was inside the bags. A446. Some stamps used by Lloyd were a star, and "El Che." A446. Roscoe identified State's Exhibit 24 as including a star stamp he had received from Lloyd before. A446-47. The stamp, "El Che," found on bags in State's Exhibit 28, was the same stamp Roscoe had seen on packages of heroin he had received from Lloyd. A447. Lakenya Howard testified that when she secretly sold some of Lloyd's heroin, she did not receive any complaints that the product was fake heroin. A481. During the search of 810 West 9th Street on October 30, 2014, police found a large amount of cash inside of an orange jacket in the corner

of the closet on the third floor of Miller's home, the same floor where Miller and Pagan's bedroom was located. A515; A522. Police found additional cash and Miller's ID in the same pocket of a pair of tan pants. A530. The total amount of cash was $2,333. A557. Police found 1,428 bags of heroin packaged in bundles of 13 inside a backpack in the same closet. A515; A522. Each was a clear ziplock bag containing a blue glassine bag. A522. Each bag was stamped with black ink and each bag contained an off-white powdery substance. A522. The bags seized were stamped with "El Che." A573. Yasmeena Brown testified that she saw Miller with Lloyd, Brian Palmer, and Pagan at Janell Lloyd's house where there was heroin on the table. A531. Yasmeena Brown met Miller through Lloyd. A534. Detective Lloyd explained that based on the forensic chemist's (Ashley Wang) calculations on the drug evidence she tested (State's Exhibit 24), 50 bundles of heroin would weigh 7.5 grams. A354; A572.

Based on the amount of circumstantial evidence presented in this case that the more than 14,00 bags, stamped in a manner consistent with other bags of heroin distributed by the racketeering enterprise and containing a white powdery substance, found in Miller's jacket in the closet of his residence, a rational trier of fact could have found that Miller possessed the bags containing more than 5 grams of heroin.

V. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING MILLER.

Question Presented[59]

Whether the Superior Court abused its discretion by imposing concurrent sentences on Miller for less than the maximum provided by statute for both conspiracy to commit racketeering and aggravated possession of heroin.

Standard and Scope of Review

This Court reviews the sentencing of a defendant in a criminal case for an abuse of discretion.[60] Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature.[61] Thus, in reviewing a sentence within statutory limits, this Court will not find error of law or abuse of discretion unless it is clear from the record that a sentence has been imposed on the basis of demonstrably false information, information lacking a minimal indicia of reliability, or it is clear that the sentencing judge relied on impermissible factors or exhibited a closed mind.[62] "In Delaware, a sentencing court has broad discretion to consider information pertaining to a

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[59] This argument responds to Argument VII of the Appellant's Opening Brief.

[60] *Mayes v. States*, 604 A.2d 839, 842-43 (Del. 1992).

[61] *Id.* at 843 (quoting *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989)).

[62] *Id.*

defendant's personal history and behavior which is not confined exclusively to conduct for which the defendant was convicted."[63]

Merits

Miller argues that based on "the minimal acts engaged in by Miller, there was no justification for the Superior Court to sentence Miller to twenty years for conspiracy to commit racketeering and twenty years for aggravated possession of heroin." Op. Br. at 55. Miller does not argue that the Superior Court relied on impermissible or false information or that the sentence exceeds the statutory maximum for the crimes for which the sentences were imposed. As such, Miller has alleged no basis upon which this Court can find sentencing error.

At sentencing, the State presented aggravating factors of Miller's prior criminal history, including convictions for assault first degree and possession of a firearm during the commission of a felony, several counts of reckless endangering first degree involving the use of a firearm, and a series of violations of probation. *See* A647. Miller faced 2-54 years in prison, and the Superior Court sentenced him to 20 years in prison followed by decreasing levels of supervision. A652. In light of Miller's violent criminal history and violations of probation, the Superior Court did not abuse its discretion in sentencing Miller to a total of 20 years in prison.

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[63] *Id.* at 842.

CONCLUSION

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

/s/Elizabeth R. McFarlan (#3759)
Chief of Appeals
Department of Justice
Carvel State Office Building
820 N. French Street, 7th Fl.
Wilmington, DE 19801
(302) 577-8500