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**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| **ATIBA MAYFIELD,** | ) | |
| | ) | |
| Defendant-Below, | ) | |
| Appellant, | ) | No. 546, 2016 |
| | ) | |
| v. | ) | On Appeal from the |
| | ) | Superior Court of the |
| **STATE OF DELAWARE**, | ) | State of Delaware |
| | ) | |
| Plaintiff-Below, | ) | |
| Appellee. | ) | |

# STATE'S ANSWERING BRIEF

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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Dated: June 14, 2017

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## NATURE AND STAGE OF THE PROCEEDINGS

The Wilmington Police Department arrested Atiba Mayfield on April 16, 2015, and a New Castle County Grand Jury jointly indicted Mayfield and his co-defendant, Michael Broomer, with Murder First Degree, Possession of a Firearm During the Commission of a Felony (2 counts), Conspiracy First Degree, Reckless Endangering First Degree, and Possession of a Firearm by a Person Prohibited. ("PFBPP"). (A1, A9-A12). On August 19, 2015, the Superior Court severed the trials of Mayfield and Broomer. (A2). Mayfield's trial commenced June 13, 2016,[1] and on June 24, 2016, the jury convicted Mayfield of all charges. (A7).

On November 4, 2016, the Superior Court sentenced Mayfield to life imprisonment for Murder First Degree, and five years of Level V incarceration for each of the remaining offenses. Mayfield filed a timely notice of appeal, followed by an opening brief and appendix. This is the State's answering brief.

[1] The PFBPP charge was severed prior to trial. (A5). The State subsequently entered a *nolle prosequi* on the charge. (A456-A457).

## SUMMARY OF THE ARGUMENTS

I. DENIED. The Superior Court did not abuse its discretion when it denied Mayfield's request to provide self-defense, defense of others and transferred-justification jury instructions. As the court properly concluded, Mayfield offered no credible evidence supporting his request for these jury instructions. Mayfield was not entitled to a defense of others instruction based upon Broomer's alleged conduct in defending Mayfield, because, even if such evidence was before the jury, that defense would only apply to Broomer. Mayfield presented no evidence of self-defense, but only speculation, and the facts did not support a transferred justification jury instruction.

II. DENIED. The Superior Court correctly denied Mayfield's request for the jury to be instructed on lesser included offenses for the charge of Murder First Degree. The court properly concluded Mayfield was either culpable for Murder First Degree or not guilty. The evidence did not provide support for the jury to convict Mayfield of a lesser included offense.

## STATEMENT OF FACTS

*Background*

Rae'Kwon Mangrum, Nicodemus Morris, Michael Broomer and Atiba Mayfield were friends. (A192, A331). On March 21, 2015, however, these friendships were irrevocably altered. On that date, Mangrum, Morris, Broomer and Mayfield were driving around Wilmington in a Chevrolet Impala. (A192, A208). Mangrum was driving the car, Broomer was the front passenger, and Morris and Mayfield were in the back seat. (A193, A331). Mangrum drove to get gas at a station on Governor Printz Boulevard. (A192). When Mangrum left the car to pay for the gas, Mayfield jumped into the driver's seat. (A193). As Mangrum returned to the car, he saw Mayfield in the driver's seat and told him to get out. (A193). Mayfield refused, and Mangrum became angry. (A193). Mangrum removed the keys from the ignition and walked away, leaving his friends in the car. (A193). Morris convinced Mayfield to get out of the driver's seat, and Mangrum returned to the car. (A193).

Mangrum then drove his friends to his residence. (A193). Once there, Mangrum told Morris to get into the driver's seat, and Mangrum went into his backyard. (A194). When Mangrum returned to the car, he told Morris to drive to Windsor Street and park. (A194) Mangrum then drew a .380 firearm and shot Mayfield in the leg. (A194). Mangrum ordered Mayfield out of the car, and

Mayfield ran away. (A194). As Broomer tried to get out of the car, Mangrum pointed the gun at him and told him to get back in. (A331). Morris then drove them to Mangrum's house.[2] (A194).

Months prior to this incident, Broomer and Mangrum had been arrested for felony drug offenses.[3] (A195). At their March 2015 joint trial, Broomer testified in his own defense, stating that the drugs were Mangrum's.[4] (A195). Mangrum was angry at Broomer for incriminating him at trial. (A195). Mangrum told everyone that Broomer was a snitch. (A195-A196, A207, A231).

*Mangrum's Murder*

During the early afternoon of April 4, 2015, Mangrum, Morris, Tyezghaire Stevens and her three-year-old son met at the Fresh Grocer supermarket in Wilmington. (A190, A221). Stevens was shopping for groceries with her grandmother and sister. (A190, A221). After Morris and Mangrum helped Stevens' grandmother with her groceries, Morris, Stevens and her son walked to the

[2] Mayfield was uncooperative with the Wilmington police investigation of this shooting. (A267).

[3] Wilmington police arrested Broomer and Mangrum on October 1, 2014. Mangrum was indicted in case no. 1410001111 for Drug Dealing, Possession of a Controlled Substance (Aggravating Factor), and Possession of Drug Paraphernalia. Broomer was indicted in case no. 1410001097 for the same offenses and Driving without a License.

[4] On April 1, 2015, the jury convicted Mangrum of Drug Dealing and related offenses. The jury acquitted Broomer of Drug Dealing.

McDonalds on 4th Street. (A190, A221). Mangrum went to his grandmother's house which was nearby at 226 South Monroe Street. (A190, A371). As they walked, Morris and Stevens saw Michael Broomer at the McDonalds drive thru. (A190-A191, A221). Broomer was wearing a grey hoodie, driving a blue car, and Mayfield's brother was in the passenger seat. (A191). Broomer and Morris "stared at each other." (A191). Morris and Stevens entered the McDonalds, and Stevens ordered food. (A191, A223).

Morris knew about the conflict between Mangrum and Broomer and he was concerned when he saw Broomer in the area. In Morris' mind, because Broomer was not a resident of Wilmington, he had no good reason to be in Wilmington. (A196). Morris immediately left Stevens at the McDonalds to warn Mangrum that Broomer was around. (A196).

Mangrum, Morris, Stevens and her son subsequently met up in an alleyway on Monroe Street, a block from the McDonalds. (A184-185, A223). The alleyway was not used for vehicular traffic, but was more of a walkway that ran between West 2nd Street and West 3rd Street. (A185). Mangrum and Stevens playfully flirted in the alleyway, while Morris stood on a sidewalk a short distance away, and Stevens' son played near Morris. (A185, A223).

As Morris checked social media on his cellphone, he saw an arm holding a gun come out of the passenger window of a blue Ford Focus as it drove past him

northbound on Monroe Street from 2nd Street. (A185-A186). Morris could not identify the vehicle's occupants, but saw a black handgun protruding from the passenger window of the car, held by a person wearing a long sleeve grey hoodie.[5] (A186). Morris ran into an adjacent alley to retrieve a handgun, and as he did so, he heard six to seven shots fired in the alleyway. (A186).

Stevens was standing next to Mangrum when the shooting started. (A224). When the first gunshot rang out, Stevens was shot in the leg. (A224, A228, State's Ex. 98). As more shots were fired, Stevens began frantically looking for her son. (A224). By the time Stevens saw Mangrum, he was "laying on the ground." (A225). The same "blue car that was at the McDonald's parking lot," that Broomer had been driving, drove north through the alleyway. (A225).

It took Morris no more than 5 seconds to retrieve the handgun. (A189). When he returned to the alleyway, Mangrum, who had obviously been shot, was moving down the alleyway and collapsed on the sidewalk, near Morris. (A188). Morris

[5] Morris originally identified Broomer as the shooter to the police, because he believed he saw Broomer wearing a grey hoodie at the McDonalds drive thru, and assumed that he was wearing the same grey hoodie during the shooting. (A207, A213). Morris never saw the face of the person firing the handgun. (A212-A213). At trial, Morris was shown the post-apprehension photographs of Mayfield (State Ex. 15) and Broomer (State Ex. 16), taken by the Wilmington police on the day of their arrests. (A64-A65; A213-A214). Both were arrested wearing grey sweatshirts, but Mayfield wore a long sleeve sweatshirt, while Broomer wore a shorter sleeved sweatshirt. At trial, Morris stated that Mayfield's sweatshirt was consistent with the arm firing a handgun at Mangrum from the window of the blue Ford Focus. (A213).

began shooting at the retreating Ford Focus with a Glock 9 millimeter semiautomatic handgun. (A188, A204). Morris fired five rounds back at the car with his 9 millimeter. (A187-A188). Almost immediately, Morris saw a police car approaching from the north end of the alleyway, travelling south, facing the blue Ford Focus as it travelled north. (A188, A226). Morris fled because it was illegal for him to possess a firearm, running east to Madison Street. (A188-89) While running, Morris observed the blue car travel up 3rd Street and out of sight. (A189).

Wilmington Police Officer Matthew Begany was on patrol in the 800 block of West 4th Street, when he heard gunshots. (A234). Begany turned his police cruiser left onto South Monroe Street. (A235). He heard the gunshots pause, and then he heard more gunshots. (A235). From Monroe Street, Begany looked down the Monroe Street alleyway towards West 2nd Street. (A235). Begany saw a blue Ford Focus, as well as a black male standing next it, who appeared to be firing a handgun. (A236). The person with the gun then disappeared from Begany's view.[6] (A236).

Begany drove towards the gunfire - south on Monroe Street towards the alleyway. (A236). The blue Ford Focus drove north, directly at him. (A236).

[6] In his police report, Begany indicated that that the person firing the gun entered the passenger side of the blue Ford Focus, but at trial, Begany testified that he had no independent recollection of whether a person entered the Focus, or "could have retreated down the alley." (A236).

Begany entered the alleyway, a "one-lane roadway . . . for emergency vehicles only." (A237). A head-on collision was imminent but, at the last second, the Ford Focus turned right into an adjoining pedestrian alleyway. (A237). Begany saw two black males in the front cabin of the vehicle, and observed its license plate – DE 489756. (A238). Begany drove south down the alleyway and stopped to aid Mangrum, Stevens, and her child. (A238).

Begany administered first aid to Mangrum. (A239). Mangrum was laying in a pool of blood, had been shot several times, was unable to communicate and struggled to breathe. (A239-40). Mangrum was transported to the hospital and died later that evening.[7] (A240-A241).

*The Police Chase*

As Begany attended to Mangrum, Wilmington Police officers Brendan Wham and Robert Lynch saw the blue Ford at the intersection of 4th and West Streets, not far from the 200 block of Monroe Street. (A28). Wham confirmed the vehicle's license plate number and activated his emergency equipment. (A28). Broomer was driving the car and Mayfield was the front passenger. (A277-A278). Broomer ignored police commands to pull over, exceeded posted speed limits, and ignored

[7] Assistant Medical Examiner Jennie Vershvovsky, MD completed Mangrum's autopsy. She determined that Mangrum suffered five perforating gunshot wounds, from which he died. (A172-75). His death was ruled a homicide. (A172, State's Ex. 79).

traffic lights. (A28-A29). Several other Wilmington Police vehicles joined the pursuit. (A29). Broomer continued through Wilmington and accelerated towards Pennsylvania Avenue and I-95. (A29-A30, Ex. 1). Broomer proceeded onto I-95 north, accelerating to speeds over 100 miles per hour, weaving in and out of traffic. (A30). Broomer crossed into Pennsylvania on I-95 pursued by the police. (A30-A31).

In Pennsylvania, Broomer exited I-95 north at Kirlin Avenue and then completed "a giant U-Turn," and proceeded on I-95 south. (A31). At that point, Officer Wham observed a black handgun being tossed out the passenger window. (A32). Police recovered a black, CZ .40 caliber semi-automatic firearm during a subsequent search of the area. (A54, Ex. 8, 9, 14). The firearm was out of ammunition. (A55, A59).

Broomer then exited onto Highland Avenue. (A33). After another illegal U-turn, the vehicle returned to I-95 north, accelerating to speeds over 100 miles per hour. (A33). Just south of Exit 7 on I-95, a Pennsylvania State Trooper deployed "stop sticks," which damaged the car's tires and Broomer exited I-95, eventually taking the McDade Boulevard exit. (A34, Ex. 2). Several vehicles were stopped at a light on McDade Boulevard, which blocked the blue ford Focus' escape. (A34). Broomer and Mayfield fled from the vehicle. (A34). Mayfield exited the passenger

side, ignoring police commands to stop. (A34-A35). Mayfield was immediately apprehended. (A35).

Wilmington Police Corporal Mark Martinez was part of the vehicle pursuit. After a short foot chase, he apprehended Broomer. (A45-A48). Martinez observed Broomer wearing a single knit glove on his right hand. (A48). Martinez seized the glove and for processing. (A125).

*The Police Investigation*

Wilmington Police detectives responded to the 200 block of Monroe Street to process the scene. Detective Hugh Stephey observed blood stains, shell casings, projectiles and damage to a fence and glass door. (A118-A124). Stephey recorded a crime scene video, took photographs, and collected physical evidence. Stephey recovered six .40 caliber shell casings from north of the manhole cover in the walkway. (A121-A122). The shell casings were located in a pattern consistent with being fired from the passenger side of the blue Ford Focus, as it travelled north on the walkway. (State's Ex. 36 (video), Ex. 37 (photo)). Another .40 caliber projectile was located in the walkway, and a .40 caliber projectile was located inside 220 Monroe Street.[8] (Ex. 13). All .40 caliber evidence was located north of a manhole cover in the alleyway. (A125). Stephey also recovered five 9 millimeter shell

[8] This projectile was consistent with being fired from the south end of the walkway, through a fence and glass door of the rear of 220 Monroe Street. (Ex. 67).

casings. (A125). All 9 millimeter casings were recovered south of the same manhole cover, where Morris fired his 9 millimeter at the blue Ford Focus. (A125, Ex. 50, 52, 54, 56, 58, 60).

After apprehension, Broomer and Mayfield were detained at the Ridley Township (PA) Police Department, and Wilmington Police Detective William Gearhart responded to collect evidence from them. (A62). Gearhart photographed Mayfield. (Ex. 15). Mayfield wore a grey, black and red PRC hooded jacket/sweatshirt, a Delaware Blue Hens sweatshirt, and blue jeans, which Gearhart seized for analysis. (A63, 65). Gearhart also used a gunshot residue ("GSR") testing kit and applied ampules to Mayfield's hands. (A63). The kit, ampules and clothing were submitted for analysis to determine the presence of GSR. (A71).

Wilmington Police Detectives Fox and Kreysea interviewed Mayfield during the early morning hours of April 6, 2015. Mayfield confirmed that he and Broomer arrived in the blue car at the Monroe Street walkway via 2nd Street. Broomer and Mayfield drove up the alleyway looking for Mangrum, because Mayfield wanted to fistfight Mangrum to resolve their differences "hand to hand" -- like a man. (A272). Mayfield claimed to have set up this fistfight through Mangrum's mother. (A274, A302). As Broomer and Mayfield approached the walkway, Mayfield claimed he observed Mangrum and two other males in the area, but denied seeing a female. (A275, A295). Mayfield said one of the two males was Nicodemus Morris. (A277).

Mayfield did not describe the second male, other than a "dude that had a white t-shirt on or something." (A277).

Mayfield said he got out of the car and started "tussling" with Mangrum. (A272). Mayfield claimed the fight occurred "in front of the houses," not where Mangrum was found by Begany. (A272). During the fight, Mayfield claimed that Mangrum pulled out a Cobra .380 firearm - the same handgun Mangrum used to shoot him in the leg a few weeks prior.[9] (A272, A276). Mayfield punched Mangrum once in the face, and wrestled the .380 handgun away from him. (A276, A287). Mayfield said as he and Mangrum were fighting, Morris opened fire on Mayfield. (A272). He said Broomer never exited the car; Mayfield got back into the car and Broomer drove away.[10] (A278). Mayfield stated that neither he nor Broomer brought a gun to the fight, and Mayfield only took Mangrum's .380 handgun away from Mangrum. (A276). The gun taken from Mangrum was "empty," and the only other person who had a gun was Morris. (A276, 278).

[9] The police found an image of a .380 Cobra semi-automatic handgun on Broomer's cellphone and text messages indicating that Broomer had been trying to sell the gun. (A160-62). The police did not recover a cellphone belonging to Mayfield. (A162).

[10] Mayfield claimed he told Broomer to stop the car as they fled, but Broomer ignored him because Broomer "was scared." (A276, 278). Later, Mayfield said that prior to fleeing, Broomer asked "where are we going?" and Mayfield told him to drive to his house, but Broomer "got scared and hopped on 95," saying "the Wilmington Police can't follow us past Philly." (A299).

Mayfield stated that he threw "Raekwon's gun" out of the car window. (A279). The police told Mayfield that they recovered a .40 caliber handgun that was thrown from the window that matched the casings recovered at the scene. (A279). They also informed Mayfield that they recovered a .380 handgun. (A279). Mayfield denied any knowledge of a .40 caliber gun in the car. (A279, A288, A290, A293).

After hearing this, Mayfield changed his story, telling police he fired the .380 during the tussle over the gun. (A281). He claimed Mangrum "shot off at least five" rounds from the .380 during the tussle, and he fired three rounds, for a total of eight shots. (A285-A286). The police told Mayfield that the .380 was recovered with five live rounds in the magazine, and could only hold eight. Mayfield then abandoned his assertion that Mangrum fired the weapon, but maintained he fired three rounds "back at the dude Nick," because Nick was shooting at him. (A286-A287). Mayfield speculated that Morris could have shot Mangrum accidentally while Morris was trying to shoot Mayfield. (A297). When the police asked Mayfield if Mangrum could have been "hit that many times by accident", Mayfield replied "I didn't say it was an accident. They were trying to, somebody was shooting intentionally. . . obviously." (A303). Mayfield stated he fired the gun *at Morris*, "three times." (A285). Mayfield then said the gun didn't shoot anymore, "like it was out of ammunition." (A285).

Mayfield often speculated that Broomer could have shot at Mangrum to defend Mayfield, but Mayfield did not think that happened because it was not what he saw. (A301, A321). Mayfield also speculated that Broomer was possibly fighting for a gun with Morris, but Mayfield did not see that either. (A319-A320).

Ultimately, Mayfield stated that Broomer got out of the car to watch him fight Mangrum. (A333). Mayfield stated that Broomer yelled "he's got a gun," and [Morris] went to get a gun. (A333). When Morris returned and started shooting, Broomer "shot back at both of them." (A333). Mayfield had already disarmed Mangrum and ran back to the car, and Broomer shot at Mangrum and Morris. (A334).

Mayfield denied having any intent to shoot Mangrum,[11] repeatedly denied bringing a gun to the fight, and denied knowing that Broomer brought a gun.[12]

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[11] "If I wanted to kill Raekwon, if I wanted Raekwon dead, the days I was out of the hospital I would have done it myself or would have had somebody do it myself or the people that wanted to do it I would have had them do it but I told them no. No. No. No I don't want Raekwon to die. No, no, don't kill him." (A281). "I didn't conspire to murder anybody." (A317). "I didn't come to murder anybody and I didn't conspire to murder anybody." (A329).

[12] "We did not come [to the fight] with a gun at all." (A276). "I did not know a second gun was in the car." (A290). "I didn't come with a gun." (A291). We didn't need the gun." (A292). "No one that I came with or left with or shot or even touched a 40 caliber handgun." (A293). "I truthfully have no explanation where a 40 caliber handgun could have come from." (A307). "I didn't see it and there was no indication, implication, previous conversation that would have led me to believe that we needed to bring a gun or that he had a gun for the fight." (A308). "I didn't have a gun and I didn't come with a gun." (A316). "I didn't see Mike with a gun. I didn't

Mayfield steadfastly denied shooting Mangrum,[13] and expressly denied *shooting at* Mangrum *or in his direction*.[14] Mayfield denied shooting the weapon when he struggled with Mangrum for the gun. (A338). Mayfield stated he only shot at Morris three times, and then the gun stopped firing.[15] (A338-A339). Mayfield denied any knowledge of a .40 caliber handgun in the car.[16] Ultimately, Mayfield identified Broomer as the person who shot Mangrum. (A334).

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know Mike had a gun." (A317). "I did not see [Broomer] with the gun. . . . I didn't see him throw the gun. . . .I didn't see the other gun." (A322). Its (sic) undisputed that I had no knowledge of a 40 being in the car. And its (sic) undisputed that I had not, no idea that we pulled up with a gun." (A325).

[13] "I wasn't the one that shot [Mangrum]." (A278). "I didn't shoot anybody. I didn't pull a trigger at anybody. I did not shoot anybody." (A280). "I didn't shoot Raekwon." (A296). "I didn't shoot Raekwon." (A299). And I know myself I didn't do it." (A318). "It is undisputed that I did not shoot Raekwon." (A325). "I didn't shoot him." (A328). "I didn't shoot anybody. I didn't shoot him. I'm being honest I didn't shoot him." (A332).

[14] "I shot the .380 at least three times . . . but it wasn't in the direction of the victim." (A309). "I didn't aim the gun at Raekwon. I didn't do it. I would have had to do a full 90 turn." (A310-A311). "There is no way I can be tried for murder because I am not a murderer." (A311).

[15] "I didn't shoot [Mangrum], I shot at Nick." (A285). "I shot back at the dude Nick." (A287). "I shot at Nick." (A338).

[16] "I did not know there was a 40 in the car." (A287-A288). "I don't know what transpired for there to be a 40 acquired between us." (A288). "No one that I came with or left with or shot or even touched a 40 caliber handgun." (A293). "I didn't see a second weapon." (A307). "I truthfully have no explanation where a 40 caliber handgun could have came from, from 'cause we did not show up with the same weapon." (A307). "I didn't see it and there was no indication, implication, no previous conversation that would have led me to believe that we needed to bring a gun or that [Broomer] had a gun." (A308).

Michael Gorski, of the RJ Lee Group, evaluated the clothing and ampules submitted for the presence of GSR.[17] (A101). Gorski reached several conclusions. Mayfield evidenced more GSR than Broomer. (A102, Ex. 29). While Broomer's left palm sample indicated a one-particle GSR characteristic, Mayfield had at least one particle of GSR for all four sample areas – the front and back of his left hand, and front and back of his right hand. (A102). Gorski's evaluation of the clothing produced a more significant result. While he found 30 particles characteristic of GSR on Broomer's sweatshirt, with 2 two-component particles present, Mayfield's sweatshirt had 12 characteristics of GSR which were three component particles, and 4 two-component particles. (A103). There was significantly more GSR on Mayfield's sweatshirt than Broomer's. (A103). As to Broomer's black knit glove recovered by Corporal Martinez when Broomer was apprehended, Gorski found "no GSR." (A104).

[17] GSR is produced any time a firearm is fired. (A98). It is generally comprised of lead, barium and antimony. (A98). The greatest concentration of GSR is around the person firing the weapon because that person is closest in proximity to the GSR particles that are being created. (A98). Particles with all three elements present in a single particle is indicative of GSR. (A98-99). Two-component particles can be produced through discharging a firearm, but there are other sources in the environment that can produce these two-component particles. (A98).

Police recovered a Cobra .380 caliber semi-automatic handgun from the northbound access road from Highland Avenue onto I-95 north.[18] (A56, Ex. 10, 11, 12, 13). The gun was loaded with five rounds of .380 ammunition. (A61). DNA testing established that Mayfield was the "major contributor" to DNA located on the grip of the .380 firearm. (A77, A81-A82, Ex. 17).

Carl Rone, a forensic firearms examiner for the Delaware State Police, examined the recovered .40 caliber semiautomatic handgun, the .380 handgun, seven .40 caliber casings, and five 9 millimeter casings. (A252). Rone concluded that the .40 caliber handgun was operational and fired the seven .40 caliber shell casings collected from Monroe Street.[19] (A252, Ex. 93). Rone opined that the projectile recovered from the inside of 220 Monroe Street appeared to have been fired from the walkway behind 220 Monroe Street, caused strike damage to a fence, passed through a glass door, and came to rest in the living room of 220 Monroe Street. (A255, Ex. 62, 63, 65, 67). Rone also concluded that the five 9 millimeter shell

[18] The police did not recover any .380 shell casings in the 200 block of Monroe Street. (A125-A126, A180). One spent .380 shell casing was recovered from under the front passenger seat floor mat of the blue Ford Focus. (A86, Ex. 21). This casing could not be identified or eliminated as being fired from the recovered .380 handgun. (A253). A box of .380 ammunition was found under the front driver's side seat. (A86).

[19] Due to damage to the projectiles, the two .40 caliber projectiles recovered from inside 220 Monroe Street and the alleyway, respectively, could not be identified or eliminated as being fired from the .40 caliber handgun. (Ex. 5, Ex. 12, A253).

casings from south of the manhole cover were fired from the same 9 millimeter handgun. (A252). Rone could not properly feed bullets into the chamber of the Cobra .380 handgun, but had to manually manipulate the weapon to make it seat a bullet to fire. (A252, A259).

## ARGUMENT

### I. The Superior Court properly denied Mayfield's requests for jury instructions based on various justification defenses.

### QUESTION PRESENTED

Whether the Superior Court properly denied Mayfield's request to provide justification jury instructions.

### STANDARD AND SCOPE OF REVIEW

This Court reviews the denial of a defendant's request for a jury instruction *de novo*.[20] Absent plain error, this Court will not review claims that are not presented to the trial court.[21] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[22]

### MERITS

Mayfield argues that the Superior Court erroneously denied his requests for defense of others and self-defense jury instructions. Mayfield contends that the Superior Court erred by ruling that "justification is unavailable if Morris accidentally

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[20] *Gutierrez v. State*, 842 A.2d 650, 651 (Del. 2004), *citing Lunnon v. State,* 710 A.2d 197, 199 (Del.1998).

[21] Del. Supr. Ct. R. 8; *Rodriguez v. State*, 2003 WL 1857547, at *1 (Del. Apr. 7, 2003).

[22] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del.1986).

shot and killed Mangrum, where Mayfield and Broomer, acting in mutual or self-defense, used deadly force towards Morris." (Corr. Op. Brf. at 23). Because Mayfield failed to provide any credible evidence that self-defense or defense of others applied to him, the Superior Court correctly declined to instruct the jury on self-defense and defense of others.

Mayfield specifically failed to argue in the Superior Court for a defense of others instruction based upon the theory that Morris accidentially shot Mangrum while shooting at Mayfield and Broomer, who were shooting at Morris in mutual or self-defense. Because Mayfield failed to argue under this theory in the trial court, this argument is waived on appeal, unless he can show plain error. He cannot.

*Trial Record*

At the prayer conference on June 22, 2016, Mayfield asked the court to consider instructions for self-defense and defense of others, arguing that there was a factual basis in the record that supported these instructions. (A392). Mayfield argued that if the court accepted Mayfield's scenario, where Mayfield "was scuffling with Mangrum, [and] Nick Morris [came] out and he's shooting in the direction of [Mayfield] and Mike Broomer returns fire, there – there's a situation where there's – he's shooting, Number 1, at Morris." (A392). The court, however, stated that such a situation would not justify Mayfield's killing of Mangrum, especially because

Mayfield's statement was that he disarmed Mangrum and *did not shoot at him*, but specifically shot somewhere else. (A392).

Mayfield next argued he would be entitled to a justification defense because Broomer *possibly* shot Mangrum in defense of Mayfield. (A392). The court heard argument from both parties. (A392-98). Ultimately, the court determined that if Broomer shot Mangrum in defense of Mayfield, Broomer could, if sufficient evidence was presented at his own separate trial,[23] avail himself of the instruction, but Mayfield could not. (A393-94). The Superior Court reasoned that, first, if the jury in Mayfield's case believed those facts, Mayfield, having not shot anyone (as in the previous scenario), would be not guilty. (A394). Second, Mayfield and Broomer were charged as accomplices and could both be convicted of murder, but that did not mean Mayfield could use accomplice "liability" to avail himself of Broomer's justification defense. (A395). The court expanded on that discussion with the following exchange:

> Court: [T]he defense is available only if all three of the following conditions are met: First, that the defendant – and we have to put Broomer in there – would have been justified in using such force

[23] On August 16, 2016, a Superior Court jury convicted Broomer of Murder Second Degree and related offenses for Mangrum's death. This Court can take judicial notice of the docket and trial transcript from Broomer's case, I.D. No. 1504010863A. Although Broomer requested and received instructions on lesser-included offenses, he did not request a jury instruction on justification. *See State v. Broomer,* August 12, 2016 Trial Transcript, at 136-61.

to protect himself against the unlawful force that he believed to be threatened against the person he sought to protect; second, under the circumstances that Broomer believed the person – you know, he's – he sought to protect; third, the defendant believed the intervention was necessary. Part of this requires Broomer's state of mind.

Defense: Uh-huh.

Court: And we really don't have any evidence of Broomer's state of mind, because it plays off of what Broomer's intent – subjective intent was in shooting, and I'm not sure we know what Broomer's subjective state of mind was.

Defense: I don't think we do.

Defense: Well, Your Honor pointed out he was shot five times. Would that be sufficient to suggest that his subjective intent was to – and – again, that's believing all of the shot came from that ---

Court: Right. Well, no. I mean, it -- yeah, that somebody intended to shoot him. But in – you know, whether that was because he wanted to shoot him because he testified against him or, you know, because of his beef about the trial, or whether it was because he thought Mayfield was in jeopardy? And I think it's necessary for the justification defense that he thought that Mayfield was in jeopardy. (A395-96).

Defense counsel then offered another "possibility" that Mayfield was fighting and a gun was introduced, so Broomer took out his gun and started shooting. (A396). Counsel argued that there was a reasonable basis for Broomer to decide he had to shoot because there was no time to retreat. (A396). The State argued that Mayfield could not rely on accomplice liability, or as the Superior Court stated "vicariously link" his behavior to Broomer's, because there was no evidence of a plan between him and Broomer as the law of accomplice liability requires. (A396-97). As the

court stated, "whatever Broomer did, Broomer did on his own, without [Mayfield] being vicariously liable for what Broomer did because [Mayfield] didn't agree to that, under his version of things." (A397). And the court pointed out that Mayfield insisted he did not shoot anyone so his defense, regardless of what Broomer said or did, was that he was not guilty. (A397).

*Relevant Law*

11 Del. C. § 303(a) states that "no defense defined by this Criminal Code or by another statute may be considered by the jury unless the court is satisfied that some credible evidence supporting the defense has been presented."[24] "Evidence tends to support a defense when it tends to establish the existence of each element of the offense."[25] Mayfield presented no credible evidence to support any one of his justification defenses at trial and, therefore, was not entitled to any such jury instruction.

In *Gutierrez v. State*, the defendant was indicted for Assault in a Detention Facility after repeatedly punching a correctional officer.[26] At trial, Gutierrez testified that he punched the officer after the officer stabbed him with a pen.[27] The

[24] 11 *Del. C.* § 303(a).

[25] 11 *Del. C.* § 303(b).

[26] 842 A.2d at 651.

[27] *Id.*

jury found him guilty of the lesser-included offense of Assault Third Degree.[28] Gutierrez appealed, arguing that the Superior Court erred in denying him a jury instruction on justification.[29] This Court reversed Gutierrez's conviction, finding that the Superior Court should have provided the jury with a self-defense instruction because Guitierrez testified to a version of events that, if true, entitled him to a self-defense instruction.[30] Specifically, the Court stated:

> We hold that the evidence presented by a defendant seeking a self-defense instruction is "credible" for purposes of Title 11, Section 303(a) if the defendant's rendition of events, *if taken as true*, would entitle him to the instruction.[31]

This Court discussed the definition of the word "credible," stating that "[c]redible" can be defined as "*[c]apable* of being believed."[32] Once the judge determines that the evidence describes a situation in the realm of possibility that would legally satisfy the requirements of self-defense, he should submit the self-defense question to the jury.[33] "The instruction may be denied only if the trial court can say, *taking the evidence in the light most favorable to the accused, and considering all*

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[28] *Id.*

[29] *Id.*

[30] *Id.* at 652.

[31] *Id.*

[32] *Id.* at 653 (citing The Random House Dictionary of the English Language 341 (unabridged ed. 1966) (emphasis added)).

[33] *Id.*

*reasonable favorable inferences that may be drawn from the evidence in favor of the accused,* that no hypothetical reasonable jury could find the fact as the accused suggests."[34]

*Mayfield has failed to provide credible evidence for a justification instruction.*

Mayfield now argues that the evidence provided a factual basis for the defense of others jury instruction he failed to request below, based upon the theory that Morris shot Mangrum accidentally, when he returned fire on Broomer and Mayfield as they defended themselves. (Op. Brf. at 28). Mayfield's argument relies solely upon his statement to police to show that Mangrum knew that Mayfield intended to arrive at 2nd & Monroe to fist fight him that afternoon. (A272-73). This "fact" was contradicted by Morris, who was concerned when he saw Broomer at the McDonalds and alerted Mangrum. (A190-92).

Mayield inaccurately states that Stevens happened upon Mangrum in the alleyway after McDonalds because Stevens testified, "I think I either walked out or called him before I walked out of McDonald's," and "[w]hen I left McDonald's I walked across the street and *met* him." (A222). Mayfield's new argument hinges upon his own statement to the police, that Morris shot at Mayfield and Broomer, after one or both of them shot at Morris in self-defense and Morris accidentally hit

[34] *Id.* (citing *Anderson v. State*, 571 So.2d 961, 964 (Miss. 1990) (emphasis added).

Mangrum instead. (Corr. Op. Brf. at 29). However, Mayfield's statement belies the independent trial evidence. The casings at the scene do not support this, one of many, versions of events and hypothetical theories Mayfield told police. Mayfield discussed with police how he came about shooting the .380 firearm:

> Mayfield: Detective I didn't bring a gun. I took a gun and I shot back.
>
> Detective: You took his gun and you shot at him.
>
> Mayfield: I didn't shoot him, I shot back at Nick.
>
> Detective: You shot back at Nick?
>
> Mayfield: Nick was shooting at us, I took his gun, I took a 380 and I shot back at Nick.
>
> Detective: Well how come there's no 380 shell casings over there?
>
> Mayfield: I promise you there's 380 shell casings over there, at least three. At least three.
>
> Detective: At least three.
>
> Mayfield: And that's the part I was hiding. I shot back.
>
> Detective: Okay did anything happen –
>
> Mayfield: Yeah, I shot and you can check my hand for a gunshot residue now.
>
> ***
>
> Detective: How many times did you shoot?
>
> Mayfield: I shot the 380 three times.
>
> Detective: Three times.
>
> Mayfield: And then it didn't shoot anymore.
>
> ***
>
> Detective: Like it was out of ammunition?

Mayfield: Yes. I know Raekwon had to, I mean when we were tussling he shot off at least five. Because I know it probably it was like eight.

Detective: Well unfortunately a 380 doesn't hold that many rounds.

Mayfield: 380 Cobra does.

Detective: Is that what that was a 380 Cobra?

***

Mayfield: You'll find at least three.

Detective: Hold on because there were five left in it.

Mayfield: There were five left in it?

Detective: There were five left in it. (A285-86).

There were no .380 shell casings at the scene. Mayfield admitted that after the shooting, he threw the .380 from the window of Broomer's car on I95. The police found a box of .380 ammunition in Broomer's car as well as a loose .380 shell casing. (A285). Logically, therefore, the .380 was brought to the scene by Broomer and Mayfield, and there were no casings at the scene because the firearm was inoperable and could not be fired. (A60-61).

Mayfield argues that Mangrum sent for Morris. (Corr. Op. Brf. at 30). Mayfield provides no proof of that and the record does not support it. Mayfield argues that Morris opened fire on Broomer and Mayfield. (Corr. Op. Brf. at 30). Morris, in fact, admitted that he shot at Broomer and Mayfield, but only at their retreating vehicle, after they killed Mangrum by driving down a pedestrian alleyway and gunning him down next to Stevens and her child in broad daylight. (A185-88).

Stevens testified that she did not see Morris at the time of the shooting, just Broomer's blue car from McDonalds. (A224). During all the shots, the blue car was in the alleyway. (A224-27). At trial, Stevens reviewed a transcript from her April 14, 2015 police interview where she stated that the bullets came from "Mike in the car."

The police recovered six spent casings that had been discharged by a .40 caliber firearm, (A104, 121), and five from a 9mm (A118, 125). The .40 caliber casings were found north of the manhole cover on North Monroe Street and the 9mm casings were found south of the manhole cover. (A118, 125). This is significant because of the relative positioning of Mangrum's body, where Stevens had been shot and where Morris had indicated he was firing. The casings were consistent with the .40 bullets having been fired from a moving vehicle at Mangrum whereas the 9 millimeter casings were consistent with Morris firing back at Broomer's moving vehicle.

The only testimony supporting a fist-fight between Mayfield and Mangrum is Mayfield's statement. The independent physical evidence does not support it. The other testimony at trial does not support it. There is simply no evidence in the record that Morris accidentally shot Mangrum after Mayfield or Broomer acted in self-defense. The court did not commit plain error by failing to *sua sponte* provide a

defense of others instruction to the jury based upon Morris' theoretical accidental conduct.

Nor is "derivative justification" cognizable here. Mayfield cites the Delaware Superior Court case *State v. Winsett*,[35] a case where three defendants were jointly tried for murder, to argue that if a principal is found not guilty of a homicide because of a valid claim of self-defense, so too the accomplices cannot be held criminally responsible for aiding and abetting the homicide.[36] But *Winsett* does not aid Mayfield. Mayfield was separately tried from his co-defendant and there was no known claim by his co-defendant of self-defense.

Mayfield's reliance on the Connecticut Supreme Court case, *State v. Montanez*[37] is similarly misplaced. In *Montanez,* the defendant and his friend, Ramos, fended off a group of men who continued to advance toward Ramos and then surrounded Ramos, while Montanez ducked behind a stairwell.[38] Montanez reemerged with a handgun and opened fire on the group as did Ramos, killing two people.[39] The court found Montanez had presented evidence sufficient to entitle him to an instruction regarding Ramos' use of self-defense because the state's witnesses

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[35] 205 A.2d 510 (Del. Super. 1964).

[36] *Id.* at 519.

[37] 894 A.2d 928 (Conn. 2008).

[38] *Id.* at 932.

[39] *Id.* at 932-33.

had testified that Ramos was new to the neighborhood and did not know any of the members of the victims' group.[40] The state's witnesses also testified that Ramos was outnumbered eight to two as he backed down the driveway and eight to one after the defendant ducked into the back stairwell of the apartment house.[41] The state's witnesses further testified that Ramos could not have known whether any members of the victims' group facing him were armed, or would permit him to flee without resistance.[42] Finally, the witnesses testified that the victims' group continued to march toward Ramos even as he pointed a pistol at them.[43] In making this determination, the court noted:

> The defendant would only have been entitled to a jury instruction on his theory of self-defense if he had presented applicable evidence no matter how weak or incredible.... However low the evidentiary standard may be, it is nonetheless a threshold the defendant must cross. The defendant may not ask the court to boost him over the sill upon speculation and conjecture.[44]

Thus, because Montanez had credible evidence that Ramos had acted in self-defense, Montanez was entitled to an instruction regarding Ramos' use of self-defense.[45]

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[40] *Id.* at 938.

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.* (citing *State v. Wright*, 822 A.2d 940, 946 (Conn. App. 2003).

[45] *Id.* at 944-45.

Here, Mayfield has presented no facts showing that Broomer acted in self-defense or in defense of Mayfield. Mayfield, in his statement, presents different versions of events. Here, he offers nothing more than speculation and possibilities, and disregards or downplays the independent evidence. At one point Mayfield told police:

> Mayfield: Is it possible that like Mike saw Raekwon about to fight and Raekwon go to make for a gun is it possible that Mike was afraid for my life again and maybe had a gun I didn't know about and shoot Raekwon.
>
> Detective: Absolutely.
>
> Mayfield: That's possible yes. Do I think that's what happened? No. Why, why did I say that because my (UI) no because that's not what I saw. (A301).

Later, Mayfield told police one and half hours into the interview:

> Mayfield: What if I tell you Mike shot him and what if Mike was really fighting for a gun with Nick.
>
> Detective: It's not what if. It's like we, we don't want what if. We want what happened. We want what happened.
>
> Mayfield: I didn't see it. I didn't see it. My eyes on Raekwon. I didn't see it.
>
> Detective: So why do you say what if? Why do you say what if this, what if that? (A 319-20).

Mayfield presented no credible evidence for the justification defenses he requested. Rather, he sought to premise the instruction on a number of different speculative stories.

In *Fetters v. State*,[46] Fetters was found guilty of Murder Second Degree for beating his father to death. On appeal, he argued that the Superior Court erred in refusing to instruct the jury on the law of self-defense.[47] Fetters proffered that the trial record was replete with credible evidence of self defense, including: 1) his poor relationship with his father; 2) expert psychological testimony that the defendant perceived his father as "abusive, domineering restrictive and punitive," 3) expert testimony stating defendant claimed to be having hallucinations that the victim was saying "filthy things" about him; and 4) the fact that the victim had tried to eject Fetters from the house on the night of the homicide. This Court was unpersuaded and affirmed the trial court, holding:

> [Fetters] offered no evidence to show that the victim was the initial aggressor. Defendant also failed to introduce any evidence to establish the quantum of force, if any, used against him by the victim. Defendant presented no evidence on the question of whether he believed that deadly force was necessary to protect himself from the victim. In short, defendant failed to establish by credible evidence each element of self-defense by deadly force.[48]

Like Fetters, Mayfield has failed to present credible evidence warranting any type of justification jury instruction. The Superior Court did not err in denying his

[46] 436 A.2d 796 (Del. 1981).

[47] *Id.* at 797.

[48] *Id.* at 798.

requests or commit plain error in failing to *sua sponte* provide a justification instruction to the jury.

## II. The Superior Court correctly denied Mayfield's request for the jury to be instructed on lesser included offenses for the charge of Murder First Degree.

Question Presented

Whether the evidence supported the trial court's conclusion that lesser included offenses were not warranted on the Murder First Degree charge.

Standard and Scope of Review

This Court reviews claims related to a trial court's denial of a request for a jury instruction on lesser included offenses to determine whether there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.[49] This Court reviews *de novo* a claim that there existed a rational basis in the evidence for the included offenses.[50]

Argument

Mayfield argues that the trial court committed reversible error in denying his request for lesser included offenses on the Murder First Degree charge. Mayfield claims the trial court "misunderstood Section 274 of the Delaware Criminal Code," (Corr. Op. Brf. at 44), and argues that the trial court "created" rules to preclude lesser

[49] *Capano v. State*, 781 A.2d 556, 628 (Del. 2001) (citing *Zebroski v. State*, 715 A.2d 75, 82 (Del. 1998)); 11 *Del. C.* § 206(c).

[50] *Capano*, 781 A.2d at 628.

included offenses. Mayfield suggests that "a jury could reasonably infer that Mayfield . . . intended to shoot Mangrum in the leg – as symbolic violence (for Mangrum shooting Mayfield on March 21, 2015)." (Corr. Op. Brf. at 47). Noting that Mayfield denied the motive for retaliation, Mayfield nonetheless suggests "a jury could hypothetically draw negative inferences that he did [shoot Mangrum in the leg]."[51] This argument is speculative and unsupported by the evidence. (A390).

The trial court rejected this "one bullet" argument. "I'm responding that it could not have been one that – because A, he's not shooting that way. There's no evidence he's shooting that way. And, he's right next to Raekwon Mangrum; and two, there's no gunshot residue on him. I mean, there's just no evidence that the .380 was used." (A391). Mayfield argued if his statement established the fact that he fired the .380, he could still posit that the portion of his statement denying that he shot at or in the direction of Mangrum should be disregarded, entitling him to lesser included offense instructions. The trial court rejected this argument, and it is belied by the fact that Mangrum's cause of death was determined to be "multiple gunshot wounds." (A391, State's Ex. 79, A172). There exists no corroborating evidence that the .380 was fired on April 4, 2015, and no evidence Mayfield fired at, or in the

[51] *Id.*

direction of, Mangrum. The gun was inoperable when recovered, and no .380 shell casings were found in the 200 block of Monroe Street.

During the prayer conference, the trial court asked Mayfield for the factual basis in the evidence to support lesser included offenses -- where a jury could find Mayfield guilty of an included offense. (A389). Mayfield argued that he admitted to discharging the .380 at the scene. (A389). When pressed further about how that admission resulted in Mangrum being shot, Mayfield's counsel conceded that he explicitly told the police he did not shoot Mangrum at any time, but was shooting at Nicodemus Morris. (A389).

As the trial court noted, Mayfield's prosecution is analogous to *Capano*. (A389).[52] Therein, Capano testified that Debbie McIntyre, in a fit of rage, accidentially shot Annemarie Fahey.[53] Capano claimed that McIntyre was about to commit suicide, and he "reached out with [his] right hand to grab [McIntyre's] left hand to pull the gun away from [McIntyre]." The gun then discharged, killing Fahey.[54] Because Capano's testimony claimed Fahey's death was an accident, "his testimony was confined to an accident scenario that involved no crime on his part."[55]

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[52] *Capano*, 781 A.2d 556.

[53] *Id.* at 632.

[54] *Id.*

[55] *Id.* at 633.

Here, Mayfield's statements, if believed, do not support any criminal liability for Mangrum's death, and the manner in which Mangrum was ambushed and repeatedly shot to death supports either a Murder First Degree conviction, or acquittal.[56]

The trial court also inquired regarding evidence that would support "some lesser state of mind homicide," because Mayfield repeatedly denied shooting Mangrum. (A389). Mayfield responded by arguing that "it depends on how the jury interprets his actions or his state of mind if they believed that Broomer may have discharged the firearm. Maybe it was not his intent to commit an intentional homicide, but rather, he was in the car and knew Broomer had a firearm." (A390). Mayfield's response is speculation. The trial court noted that Mayfield "said he didn't know Broomer had a gun." (A390). Thus, Mayfield lacked the state of mind sufficient to establish criminal culpability, because he would have had no idea of Broomer's intent.

Moreover, as the trial court pointed out, there was really no question as to the shooter's intent when Mangrum was shot 5 times – supporting the elements of intentional murder. While not dispositive as to the shooter's intent, Mayfield acknowledged that Mangrum's murder was not an accident – it was obvious to him

[56] As this Court held in *Henry v. State*, 805 A.2d 860 (Del. 2002), "In ruling upon a request to instruct the jury on a lesser included offense, the trial judge "must give full credence to [the] defendant's testimony." *Id* at 865, citing *United States v. Brown*, 287 F.3d 965, 974 (10th Cir. 2002).

that "someone was shooting intentionally." (A303). When the police told Mayfield that Mangrum was shot more than once, Mayfield responded "Someone was shooting to kill." (A304).

The trial court reviewed the firearm evidence to consider whether it provided a factual basis for lesser included offenses. (A390). The trial court noted that there were three semiautomatic weapons at issue – a .40 caliber, the .380 and the 9 millimeter. (A390). Two types of shell casings were recovered, .40 caliber and 9 millimeter. (A390). The only gun associated with the blue Ford Focus was the .40 caliber. (A390). The only evidence that the .380 was fired comes from Mayfield's statement, and he "makes it clear he was not shooting at Mangrum." (A390). The trial court noted, in the context of everything Mayfield said, "it really would not be possible for him to be mistaken about that because he's right there with [Mangrum], virtually wrestling with him." (A390). The physical evidence, or lack thereof, does not support a claim that Mayfield shot Mangrum, and it does not support an assertion that Mayfield fired the .380 handgun. Because of the distance the gun would have been from Mangrum during the tussle for the weapon, the trial court concluded the hypothetical scenario of Mayfield shooting Mangrum was not supported by the evidence.[57] (A391). In fact, Mayfield's trial counsel conceded that the .380 was not

[57] Dr. Vervshovsky testified that all bullets hit Mangrum from an indeterminate range, and there was no evidence of stippling – tiny little burns observed around a

used as the murder weapon. The trial court indicated:

> The Court: I didn't know that there's any evidence in the record that would support a conclusion that the .380 was used to kill Mangrum. I don't know. If anybody disagrees, speak up.
> Defense: From – I think its difficult from the fact [sic] that came forth to – to say that that was the murder weapon.
> The Court: Well, I mean, you'd have to point to some evidence.
> Defense: Uh-huh.
> The Court: Right, so that leaves us with two guns.
> (A391).

Mayfield then attempted to justify lesser included offense jury instructions based on an "imperfect self-defense scenario." (A392). Mayfield did not explain what was meant by the "imperfect self-defense scenario," or how it applied here, given the multiple and hypothetical justification scenarios advanced at the prayer conference. Nor did Mayfield identify *any facts* supporting lesser included offense instructions. Mayfield did not assert that Mangrum used force against him. (A392). Mayfield did not assert that he was justified in shooting Mangrum. Rather, he expressly said *he did not shoot him*. And, as the Superior Court noted, Mayfield's defense was that he was just engaging in a fist fight, he was not guilty of Murder First Degree or any other included offense. (A392). The trial court properly rejected the request for lesser included offenses.

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gunshot wound. (A172). Although weapons are different, Dr. Vershvovsky indicated stippling results from shots as close as 2-3 feet from the wound. (A173).

A defendant may be convicted of an offense for which he has not been indicted if all the elements of that offense are included in the definition of the charged offense or if the same result occurs but there is a lesser kind of culpability.[58] As this Court noted in *Capano*, "the statute and the case law require that we determine whether 'there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.'"[59]

A trial judge should grant a request for lesser included offenses if the defendant meets the following four criteria: (1) the defendant makes a proper request; (2) the lesser included offense contains some but not all of the elements of the charged offense; (3) the elements differentiating the two offenses are in dispute; and (4) there is some evidence that would allow the jury rationally to acquit the defendant on the greater charge and convict on the lesser charge.[60] However, "the court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense."[61] The record

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[58] *See* 11 *Del. C.* § 206(b).

[59] *Capano*, 781 A.2d at 628.

[60] *Cseh v. State*, 947 A.2d 1112 (Del. 2008) (citing *Bentley v. State*, 930 A.2d 866 (Del. 2007)); *Henry*, 805 A.2d 860.

[61] 11 *Del. C.* § 206(c). *See Coles v. State*, 959 A.2d 18, 25 (Del. 2008); *Lilly v. State*, 649 A.2d 1055, 1060-62 (Del. 1994).

must provide some support for a jury to convict the defendant of the requested charge.[62]

Mayfield and Broomer had clear motive to murder Mangrum. Just four weeks prior, Mangrum shot Mayfield with minimal provocation. Two weeks later, Broomer testified against Mangrum, Mangrum was convicted of Drug Dealing, and Mangrum labeled Broomer a snitch. When Broomer and Mayfield turned off 2nd Street onto Monroe Street, they meant to kill Mangrum. They sought him out and drove up a narrow, confined walkway, and without warning or provocation immediately opened fire, shooting at Mangrum at least five times with a .40 caliber handgun. Tyezghaire Stevens was collateral damage. The .40 caliber handgun, when recovered, was empty. Every bullet Broomer and Mayfield had in that gun was discharged. Six .40 caliber casings littered the walkway as if bullets had been fired from a moving vehicle. Broomer and Mayfield almost crashed head on into a police car and then led the police on a 100 + mile per hour interstate pursuit. They

[62] *See Ward v. State*, 575 A.2d 1156, 1159 (Del. 1990); *Bailey v. State*, 521 A.2d 1069, 1093-94 (Del. 1987); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982); *cf. Spaziano v. Florida*, 468 U.S. 447, 455 (1984) *overturned on other grounds by Hurst v. Florida*, 136 S. Ct. 616 (2016) ("Where no lesser included offense exists, a lesser included offense instruction detracts from, rather than enhances, the rationality of the process.").

discarded two firearms to attempt to suppress evidence, and they ran when their vehicle was disabled. Mayfield's intent to cause Mangrum's death is clear.[63]

Mayfield's reliance on *Kellum*[64] is misplaced. Kellum approached Turner, a drug dealer, and engaged him in conversation.[65] That conversation became heated, and Kellum shot Turner in the thigh at close range.[66] Kellum then shot Turner in the "waist area" four times and immediately fled.[67] Despite identifying Kellum as the shooter during the police investigation, Turner testified that Kellum did not shoot him.[68] Kellum presented an alibi defense.[69] This Court concluded that Kellum shot Turner at point blank range in the thigh and waist areas, avoiding "more vital areas." It further credited the fact that Kellum departed without "inflicting a fatal blow."[70] There was no evidence, other than the number of shots fired, from which the jury

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[63] *Cf. Flonnory v. State*, 893 A.2d 507, 537 (Del. 2006) (Intent to commit Murder First Degree was established where Flonnory had been shot at by the victim and therefore had motive to retaliate and kill the victim; the location of the shell casings in the alleyway supported an ambush; both victims suffered multiple gunshot wounds; Flonnory suppressed the firearm after the shooting; and Flonnory bragged about "shooting up the block.")

[64] *Kellum v. State*, 2008 WL 2070615 (Del. May 16, 2008).

[65] *Id.* at * 1.

[66] *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] *Id.*

could infer an intent to commit murder, and a reasonable juror could have inferred Kellum's intent to injure Turner, and not take his life.[71] That is not this case.

Mayfield elicited on cross-examination from Stevens that during her April 14, 2015 interview with the police, she identified Broomer as the person who fired the first shots from the car at Monroe Street. (A230). Mayfield's first defense witness, Brittany Mangrum, told the police that Mayfield caught her attention when he slowly drove by her in a blue car *earlier in the day*, but did not identify him as even being present during the shooting. (A369). Brittany Mangrum testified that after hearing gunshots, she ran to the scene and found Stevens bleeding from a gunshot wound. Brittany Mangrum testified that Stevens told her Michael Broomer "did it." (A369). Mayfield's second witness, Dorothy Mangrum, testified "I observed Michael Broomer shoot my grandson." (A372). Dorothy Mangrum was disturbed that Broomer looked her "dead in the eyes" and continued to shoot Mangrum, and there was no doubt in her mind that Broomer was the shooter. (A372). There was nothing presented in Mayfield's case in chief to support lesser-included offense instructions, and the trial court correctly denied Mayfield's request for lesser included offenses.

Mayfield's argument is based on conjecture and speculation. There is no evidence that Mayfield shot Mangrum. Mayfield repeatedly and explicitly denied

[71] *Id.*

doing so. Nor is there any credible corroborative physical evidence to support such a claim. Mayfield's hypothetical ignores Stevens' presence during the shooting and her injuries, the .40 caliber handgun thrown from the car and .40 caliber casings at the scene; and the absence of any evidence that the .380 was fired in the 200 block of Monroe Street. The jury could not "hypothetically draw negative inferences that [Mayfield] did" fire the weapon and shoot Mangrum in the thigh, and ignore all of the corroborative testimonial and physical evidence adduced at trial, and the lack of corroborative evidence to support Mayfield's "theory."

## CONCLUSION

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

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Date: June 14, 2017

**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| **ATIBA MAYFIELD,** | ) | |
| | ) | |
| Defendant-Below, | ) | |
| Appellant, | ) | No. 546, 2016 |
| | ) | |
| v. | ) | On Appeal from the |
| | ) | Superior Court of the |
| **STATE OF DELAWARE**, | ) | State of Delaware |
| | ) | |
| Plaintiff-Below, | ) | |
| Appellee. | ) | |

## CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 9,977 words, which were counted by Microsoft Word 2016.

Dated: June 14, 2017 /s/ Maria T. Knoll