



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

CHRISTOPHER RIVERS, )  
 ) No. 536, 2016  
 Defendant Below- )  
 Appellant, ) ON APPEAL FROM  
 ) THE SUPERIOR COURT OF THE  
 v. ) STATE OF DELAWARE  
 ) ID No. 1409001584  
 STATE OF DELAWARE, )  
 )  
 Plaintiff Below- )  
 Appellee. )

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

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**APPELLANT'S AMENDED OPENING BRIEF**

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## NATURE OF PROCEEDINGS

On September 22, 2013, Joseph and Olga Connell were found shot to death in front of their residence, 84 Paladin Drive, Wilmington, Delaware. On September 3, 2014, Christopher Rivers, Joseph Connell's business partner, was arrested for the murders of the Connells.<sup>1</sup> Shortly thereafter, a New Castle County Grand Jury returned an indictment against Rivers and a co-defendant, Dominique Benson, charging them with two counts of Murder First Degree, two counts of Possession of a Firearm During the Commission of a Felony, and one count of Conspiracy First Degree.<sup>2</sup> Rivers was also charged with Criminal Solicitation First Degree.<sup>3</sup> On February 29, 2016, a reindictment was handed down by a New Castle County Grand Jury, renewing the same charges against Rivers and Benson, but adding Aaron Thompson as a co-defendant in the murders of Joseph and Olga Connell.<sup>4</sup> The joint trial of Rivers and Benson began on April 5, 2016.<sup>5</sup> The State's theory of the case was a 'murder-for-hire' scheme, alleging Rivers paid to have the Connells killed in order to cash in a nearly \$1,000,000 insurance policy where Joseph Connell was the insured, and Rivers was the

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<sup>1</sup> A1, at D.I. 1.

<sup>2</sup> A23.

<sup>3</sup> A25.

<sup>4</sup> A26.

<sup>5</sup> A18, at D.I. 90.

beneficiary, and Benson and Thompson carried out those killings.<sup>6</sup>

On August 31, 2015, counsel for Rivers filed a motion for a change of venue, requesting the trial be transferred from New Castle County.<sup>7</sup> The State opposed the motion and filed a response.<sup>8</sup> On December 22, 2015, the court denied the motion to transfer the trial from New Castle County.<sup>9</sup>

On March 28, 2016, an office conference was held to discuss pretrial issues.<sup>10</sup> Two evidentiary issues were brought to the Court's attention, the second of which is pertinent to this appeal: The State intended to introduce post-murder statements made by codefendants Dominique Benson and Aaron Thompson at trial, contending the statements were admissible as co-conspirator statements under Delaware Rule of Evidence 801(d)(2)(E).<sup>11</sup> Counsel for Rivers and Benson jointly opposed.<sup>12</sup> To address the issues, a motion in limine was filed by the State to introduce the alleged hearsay statements at trial.<sup>13</sup> Counsel for Rivers and Benson filed a joint response opposing introduction of the alleged hearsay statements at trial.<sup>14</sup> After the

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<sup>6</sup> A838-845.

<sup>7</sup> A29.

<sup>8</sup> A184.

<sup>9</sup> A194.

<sup>10</sup> A203.

<sup>11</sup> A205-206.

<sup>12</sup> *Id.*

<sup>13</sup> A209.

<sup>14</sup> A369.

State filed a reply brief,<sup>15</sup> the Court granted the State's motion in limine, allowing the alleged post-murder statements made by codefendants Benson and Thompson.<sup>16</sup>

On March 1, 2016, Rivers submitted proposed *voir dire* to the trial court.<sup>17</sup> On March 9, 2016, the State responded with proposed *voir dire* to the court.<sup>18</sup> Ultimately, the trial court rejected the majority of Rivers' submission concerning the potential jurors' knowledge of the case due to the media coverage, and administered an edited version of the *voir dire*.<sup>19</sup>

On April 5, 2016, Rivers and Benson were jointly tried before a jury.<sup>20</sup> On April 29, 2016, the jury found Rivers guilty on all charges.<sup>21</sup> The jury also found Benson guilty of Conspiracy First Degree, but were unable to reach a verdict on the other charges.<sup>22</sup> On October 7, 2016, Rivers was sentenced to serve a life sentence for each Murder count and a total of 50 years for the remaining counts.<sup>23</sup> A notice of appeal was timely filed by undersigned counsel on November 3, 2016. This is Rivers' Opening Brief.

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<sup>15</sup> A686.

<sup>16</sup> A698.

<sup>17</sup> A703.

<sup>18</sup> A712.

<sup>19</sup> A722, A741-743.

<sup>20</sup> A18, at D.I. 90.

<sup>21</sup> *Id.*

<sup>22</sup> A2305-2306.

<sup>23</sup> A731-734.

## **SUMMARY OF THE ARGUMENT**

I. The trial court prevented Appellant from receiving a fair and impartial jury trial by denying the Appellant's motion for change of venue from New Castle County due to the highly inflammatory and sensationalized media coverage and the New Castle County public's reaction to this case.

II. The trial court abused its discretion by allowing alleged codefendants' statements made after the murders were committed to be admitted at trial pursuant to the co-conspirator hearsay exception under D.R.E. 801(d)(2)(E) because the statements were not made during the furtherance of the conspiracy.



## STATEMENT OF FACTS

On September 22, 2013, at approximately 1:28 a.m., New Castle County Police were dispatched to 84 Paladin Drive, Wilmington, in response to several calls of shots fired and a female body on the ground.<sup>24</sup> Responding officers located Olga Connell bleeding from fatal gunshot wounds on the ground in front of the residence.<sup>25</sup> Olga's husband, Joseph Connell, was found shot to death in front of the residence behind some heavy shrubbery.<sup>26</sup> Joseph Connell had his cell phone clutched in his right hand.<sup>27</sup> A multitude of 9mm casings and .22 caliber casings as well as several live rounds, projectiles, and bullet fragments were located at the scene.<sup>28</sup> Autopsies were conducted, and revealed that Olga Connell had suffered 4 gunshot wounds to her face, head and shoulder.<sup>29</sup> Joseph Connell was shot 4 times in the back of the head.<sup>30</sup>

### *The Ensuing Police Investigation*

New Castle County Police Officer Kelly Richards was one of the first responding officers at the scene and recognized both Joseph and Olga

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<sup>24</sup> A923-924.

<sup>25</sup> A924-925.

<sup>26</sup> A927.

<sup>27</sup> A1287.

<sup>28</sup> A1337, A1341-1342.

<sup>29</sup> A1365, A1368-1369, A1374.

<sup>30</sup> A1384.

Connell from a burglary investigation she initially handled in July of 2013.<sup>31</sup> At that time, the couple reported a burglary at their residence of 84 Paladin Dr., which on the morning of their murder remained unsolved.<sup>32</sup> The couple reported approximately \$21,000 worth of items had been stolen during that burglary.<sup>33</sup>

On September 22, 2013, at approximately 2:00 a.m., Detective James Leonard was assigned as chief investigating officer of the double-homicide of the Connells, and was briefed by Officer Richards about the prior burglary investigation.<sup>34</sup> Officer Richards relayed to Detective Leonard that Joe Connell owned C&S Auto, and Olga also worked at the shop.<sup>35</sup> Detectives went to Joe Connell's mother's house, where they learned that Chris Rivers was Joe Connell's business partner at C&S Auto.<sup>36</sup>

Acting on this information, Detectives Leonard and Breslin went to Chris Rivers' home at 1228 Faun Drive in North Wilmington at approximately 6:00 a.m.<sup>37</sup> Rivers answered the door and the detectives

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<sup>31</sup> A925-928.

<sup>32</sup> *Id.*

<sup>33</sup> A935.

<sup>34</sup> A136.

<sup>35</sup> A1433.

<sup>36</sup> A1433-1434.

<sup>37</sup> A1435-1436.

asked him if he was Joe Connell's business partner.<sup>38</sup> Rivers' response was "what did he do now[?]"<sup>39</sup> Detective Leonard asked Rivers what he meant by that, to which Rivers advised that Joe Connell was "involved in steroids and he had been having some troubles with him and steroids at the automotive shop."<sup>40</sup> The detectives asked Chris Rivers to come to County Headquarters to be interviewed.<sup>41</sup> Rivers cooperated and drove to the police station where he voluntarily spoke to police.<sup>42</sup>

At the police station, Rivers mentioned to Detective Leonard two potential areas of interest for the investigation.<sup>43</sup> First, Rivers advised of a feud between Joe Connell and his sister Kelly Connell.<sup>44</sup> Second, that Joe Connell was involved in using and dealing steroids.<sup>45</sup> Rivers took the police to C&S Auto, and showed them where Joe Connell kept his steroids.<sup>46</sup> Police also asked Rivers for his cell phone to analyze as part of the investigation, to which Rivers complied.<sup>47</sup>

After hearing of the alleged feud between the Connell siblings,

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<sup>38</sup> A1436.

<sup>39</sup> A1436-1437.

<sup>40</sup> A1437.

<sup>41</sup> *Id.*

<sup>42</sup> A1437-1438.

<sup>43</sup> A1466.

<sup>44</sup> *Id.*

<sup>45</sup> A1467-1468.

<sup>46</sup> A1468.

<sup>47</sup> A1464.

Detective Leonard interviewed Joe Connell's sister, Kelly Connell, who later testified about their family relationship and recent 'feud' at trial.<sup>48</sup> At the time, Detective Leonard considered the murder of the Connells was possibly connected to this feud between Joseph and Kelly Connell.<sup>49</sup>

At trial, Kelly testified that her and Joe had not been speaking during the couple of months before his death due to a dispute.<sup>50</sup> Apparently, Kelly discovered that Joe and their mother conspired to take Kelly's wedding ring that their mother had given to Kelly previously in 2005 for Kelly's first marriage.<sup>51</sup> Kelly's mother admitted to taking the ring from Kelly and giving it to Joe, evidently so Joe could use it as a wedding ring for Joe and Olga's nuptial.<sup>52</sup> Kelly confronted Joe via text messages about this revelation after the Connells married, during Joe's honeymoon with Olga.<sup>53</sup> Kelly had discovered that the ring was given to Joe and was made into another ring for his new bride Olga.<sup>54</sup> As a result, Kelly had not spoken to her brother during the two months prior to the murders.<sup>55</sup>

Also in the initial investigative stages, police began to locate

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<sup>48</sup> A1466.

<sup>49</sup> *Id.*

<sup>50</sup> A1166.

<sup>51</sup> A1166-1167.

<sup>52</sup> A1168.

<sup>53</sup> A1169.

<sup>54</sup> A1172-1173.

<sup>55</sup> A1166.

witnesses who had been with Joseph and Olga Connell earlier in the evening of September 21, 2013. One of those witnesses, Sonia Giuliani, testified that she and several other people were out that Saturday evening with the Connells having a birthday party for Olga.<sup>56</sup> Around 12:30 that night, everyone left the party, leaving Joe and Olga by themselves.<sup>57</sup> Another witness, Donald Mellinger, corroborated Giuliani's account. Mellinger stated that he, his wife, and several other people gathered at Firestone restaurant that night with Joe and Olga Connell to celebrate Olga's birthday.<sup>58</sup> Around midnight, Mellinger and the others left together, leaving Joe and Olga at the restaurant.<sup>59</sup> Throughout the evening, Mellinger said that Joe was receiving text messages from Christopher Rivers saying that he was going to stop by the restaurant as well, but Rivers never appeared.<sup>60</sup>

The following morning, Mellinger was supposed to meet Joe Connell and another friend, Jay, to drive to the Poconos to ride ATV's.<sup>61</sup> Mellinger and Jay met and tried unsuccessfully to contact Joe Connell.<sup>62</sup> The two men drove to the Connell's Paladin Club residence with their ATV's, and were

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<sup>56</sup> A1019-1020.

<sup>57</sup> A1023.

<sup>58</sup> A1038.

<sup>59</sup> A1040.

<sup>60</sup> A1039.

<sup>61</sup> A1040.

<sup>62</sup> A1041.

met by police still at the murder scene.<sup>63</sup>

Continuing the investigation, Detective Leonard drafted subpoenas to obtain credit histories of the Connells, and Chris Rivers.<sup>64</sup> Detective Leonard discovered 3 separate civil judgments against C&S Auto and Chris Rivers, all predating Joe Connell's partnership in C&S Auto.<sup>65</sup> During the search of the Connell's residence, among other documents, police discovered an insurance policy.<sup>66</sup> The insurance policy specified Mr. Connell as the insured, and Chris Rivers as the beneficiary.<sup>67</sup>

Further investigation revealed "key person" insurance policies had been obtained by Joe Connell and Chris Rivers from the National Life Insurance Company.<sup>68</sup> To secure the mortgage from Susquehanna Bank to purchase C&S Auto, the two business partners, Joe Connell and Chris Rivers, were required to purchase identical insurance policies, "key person" insurance policies.<sup>69</sup> Under these policies, if either Joe Connell or Chris Rivers perished, the insurance policy would pay the remaining partner, the

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<sup>63</sup> *Id.*

<sup>64</sup> A1472.

<sup>65</sup> A1473-1476.

<sup>66</sup> A1479.

<sup>67</sup> A1479-1480.

<sup>68</sup> A2014-2015.

<sup>69</sup> A2015.

specified beneficiary, \$977,500.<sup>70</sup> The policy also had a collateral assignment to Susquehanna Bank to secure the mortgage.<sup>71</sup>

Further along in the investigation, police obtained phone records for the cell phones belonging to Olga Connell,<sup>72</sup> Joe Connell,<sup>73</sup> and Chris Rivers.<sup>74</sup> After reviewing the call detail records for Rivers' cell phone, Detective Leonard's attention was drawn to a certain phone number in particular, (302)559-5666, which Detective Leonard discovered was the number to a cell phone used by an individual named Joshua Bey.<sup>75</sup> This led Detective Leonard to obtain the phone records for Bey's phone, which was in the name of his live-in girlfriend, Alicia Prince.<sup>76</sup>

### ***The investigation of Joshua Bey.***

Detective Leonard obtained Chris Rivers' cell phone call detail records from his service provider through a subpoena. In his review of those records, Detective Leonard noted that several voice calls and texts with Joe Connell, at and around the time of the murders, had been deleted from

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<sup>70</sup> *Id.*

<sup>71</sup> A2017, A2020.

<sup>72</sup> A1929.

<sup>73</sup> A1939-1940.

<sup>74</sup> A1940.

<sup>75</sup> A1945-1946.

<sup>76</sup> A1946.

Rivers' cell phone.<sup>77</sup> The record of those calls and texts were memorialized in Rivers' call detail records, with the notation that they were "deleted," from the physical cell phone.<sup>78</sup> Those same calls and texts with Rivers also remained on Joe Connell's physical cell phone.<sup>79</sup> Also of note to Detective Leonard, were several calls between Rivers and Joshua Bey's cell phone at and around the time of the murders were also deleted from Rivers' physical cell phone, but were documented on Rivers' call detail records from his service provider.<sup>80</sup> This information led Detective Leonard to conduct his first interview of Joshua Bey, which took place on October 4, 2016, at New Castle County Police Headquarters.<sup>81</sup>

Initially, Bey denied knowing Chris Rivers.<sup>82</sup> Then, Bey admitted Rivers was his mechanic.<sup>83</sup> Upon inquiry of why Bey would have telephone contact late at night when the murders occurred if Rivers was his simply his mechanic, Bey said he must have "pocket-dial[ed] Mr. Rivers accidentally."<sup>84</sup> When confronted with the fact that the calls were outgoing as well as incoming, Bey explained the calls must have been about

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<sup>77</sup> A2064.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> A2064-2065.

<sup>81</sup> A2065.

<sup>82</sup> A2066.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*



discussing arrangements to have Rivers fix Bey's car.<sup>85</sup> Bey denied having a social relationship with Rivers.<sup>86</sup> Later, Detective Leonard eliminated Bey from being present at the scene of the murders with video surveillance from Kohl's showing Bey at work that night.<sup>87</sup>

Detective Leonard continued to investigate Joshua Bey and obtained additional cell phone records for Bey, Rivers and the Connells.<sup>88</sup> Upon review of the additional cell phone records, Detective Leonard conducted a second interview with Bey on October 24, 2013.<sup>89</sup> In that interview, Bey stated that he was Rivers' "drug-dealer, that he sold him pills."<sup>90</sup> Bey advised that the calls between him and Rivers that night pertained to a drug deal.<sup>91</sup> The following morning, Bey was arrested for providing a false statement to a police officer based on Bey's prior statement regarding the phone calls with Rivers the night of the murders.<sup>92</sup> At the time, Bey was on probation, and this arrest triggered a violation of probation for Bey.<sup>93</sup>

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> A2066-2068.

<sup>88</sup> A2068.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> A2069.

*The investigation of Dominique Benson and Aaron Thompson.*

Detective Leonard's investigation of all the cell phone records showed a pattern of communication.<sup>94</sup> On the night of the murders, after a call or text between Rivers and Joe Connell, Rivers would then make a call to Bey, and then Bey would make a call to a cell phone ((302) 391-4949) later identified as used by an individual named Dominique Benson.<sup>95</sup> Detective Leonard then obtained those cell phone records, the named subscriber of which was Ashley Cooper, the mother of Dominique Benson's four children.<sup>96</sup>

After reviewing Benson's phone records, the call pattern during the night of the murders expanded. After Bey contacted Benson's phone, Benson's phone would then contact another phone number ((302) 275-5939) registered to an Aaron Thompson.<sup>97</sup>

At the conclusion, Detective Leonard's analysis of the phone records at and around the time of the night of the murders showed the following: Joe Connell would text Chris Rivers, Chris Rivers would then text Joshua Bey, and then Joshua Bey would contact Dominique Benson, and

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<sup>94</sup> A2070.

<sup>95</sup> A2071.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

Dominique Benson would contact Aaron Thompson.<sup>98</sup>

Finally, Bey was interviewed by Detective Leonard a third time on August 14, 2014, the morning of his trial for the charge of Providing a False Statement to a Law Enforcement Officer.<sup>99</sup> Bey's story changed for the third time. In short, Bey proffered he was a middle-man, hired by Chris Rivers to murder his business partner Joe Connell and his wife Olga.<sup>100</sup>

### *Joshua Bey's trial testimony*

#### *1. The alleged murder-for-hire scheme*

In exchange for Bey's cooperation and trial testimony, the State offered a plea deal to Bey, offering him a guilty plea to 1 count of Conspiracy First Degree, in his role for "conspiring to commit the murders of Joseph and Olga Connell..."<sup>101</sup> The State dropped the murder counts in the case as well as the Providing a False Statement to a Police Officer charge.<sup>102</sup> The State also agreed not to pursue a burglary prosecution relating to the prior break-in at Joe and Olga's residence.<sup>103</sup> Bey admitted to being involved in the burglary of the Connells' residence shortly before the

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<sup>98</sup> A2081-2082.

<sup>99</sup> A2188.

<sup>100</sup> A2189.

<sup>101</sup> A2161.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

murders.<sup>104</sup>

At trial, Bey testified he was Rivers' drug dealer. Bey claimed to sell Chris Rivers a hundred Percocet pills for \$20 apiece "about twice a week."<sup>105</sup> *Id.* at 17. In addition to pills, Bey sold Rivers powder cocaine.<sup>106</sup> Bey had a legitimate job working the night shift at Kohls department store on Route 202 in Wilmington.<sup>107</sup>

Bey claimed that Rivers approached him at the shop, shortly after Joe and Olga returned from vacation, and said that Joe "drained the account, the business account," and "Joe was running the business into the ground," incurring \$25,000 in debt to the parts company.<sup>108</sup> Bey said Rivers concluded this with "I'll pay you anything, man, if you can get them out of the way."<sup>109</sup> Bey said he may have asked him how much he was willing to pay, and Bey made an offer of "100,000."<sup>110</sup> Bey claimed Rivers response "was like, nah, Harry got some people – Harry got some people that can do it much cheaper," referring to an convicted felon later identified as Harry

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<sup>104</sup> A2172.

<sup>105</sup> A2163.

<sup>106</sup> *Id.*

<sup>107</sup> A2167.

<sup>108</sup> A2167-2168.

<sup>109</sup> A2168.

<sup>110</sup> *Id.*

Cook.<sup>111</sup> Bey purportedly countered with “60,000.”<sup>112</sup> Bey said Rivers said his dad wrote him a check for \$25,000 to pay the part company, and he could use that to pay Bey<sup>113</sup>. Also, Rivers told Bey of an insurance policy where the bank would pay off the shop for a million dollars if anything happened to either partner.<sup>114</sup> According to Bey, Rivers allegedly wanted both Connells killed in case Joe had Olga as a beneficiary in his will.<sup>115</sup>

Purportedly, to “seal the deal,” Bey said Rivers promised him \$2,000 a month “forever.”<sup>116</sup> Bey testified he had the idea of getting Dominique Benson involved in this so-called murder-for-hire scheme.<sup>117</sup> Bey alleged Rivers paid Bey \$5,000 to start the process, and Bey took the \$5,000 and used it to pay his lawyer Joe Benson, Esq.<sup>118</sup>

Bey testified he discussed the proposition with Dominique Benson and said Rivers would pay \$20,000 “for the job.”<sup>119</sup> Bey said Benson was amenable to the scheme, and wanted to see if Aaron Thompson was

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<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> A2169.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> A2170.

interested in doing it with him.<sup>120</sup> Later, Bey said he drove to the shop with Benson because Benson wanted to know who he was dealing with, and once there, Rivers got in the car.<sup>121</sup> In the car, Rivers said “Yeah, I got the money, 30/30,” referring to paying \$30,000 for each of the Connells, as he and Bey previously agreed.<sup>122</sup> Bey and Benson left, and Benson confronted Bey, claiming Bey was “holding out,” by previously telling him Rivers was paying \$20,000, only to find out at the meeting with Rivers that Rivers was paying \$60,000 to have the Connells killed.<sup>123</sup> Bey testified that he compromised, agreeing to split the extra \$40,000 with Benson.<sup>124</sup> Later, Bey said he and Benson met with Aaron Thompson at Benson’s house and discussed the plan to kill Joe and Olga Connell.<sup>125</sup>

As far as the burglary investigated at 84 Paladin Drive two months prior to the murders, Bey testified he did it himself with a co-conspirator at the behest of Rivers.<sup>126</sup> Bey stated he got away with some jewelry.<sup>127</sup>

## ***2. Bey’s claims about the night of the murders.***

On September 21, 2013, Bey testified that Benson called him to see if

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> A2170-2171.

<sup>125</sup> A2171.

<sup>126</sup> A2172.

<sup>127</sup> *Id.*

he knew where the Connells would be that night.<sup>128</sup> Bey, in turn, contacted Rivers who said the Connells would be leaving for the Firestone restaurant at the Riverfront that night, likely in the next half-hour to hour.<sup>129</sup> Rivers followed up with Bey by sending him a screenshot of a text message from Joe Connell advising when he was leaving for the Riverfront.<sup>130</sup> Bey followed up with Benson by stopping at Benson's house on his way to work at Kohls sometime before 10:00 that evening.<sup>131</sup> Benson advised he went to the Connells' residence, but was too late, and would try again that night when the Connells returned.<sup>132</sup> Bey said he then stopped by C&S Auto and told Rivers "they was going to do it when [the Connells] came back, so keep your phone on."<sup>133</sup>

While at work that night, Benson called Bey to find out when the Connells were leaving the restaurant.<sup>134</sup> Bey then called Rivers and told him, Rivers hung up, and then texted a message to Bey that the Connells would be leaving in 30 minutes.<sup>135</sup> Bey relayed the message to Benson.<sup>136</sup>

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<sup>128</sup> A2177.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> A2177-2178.

<sup>133</sup> A2178.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

When Bey finished work at 6:00 a.m. the following morning, he called Benson, and asked him “was it official.”<sup>137</sup> Bey testified Benson said he would call Aaron Thompson, and get back to Bey.<sup>138</sup> Around 8:00 a.m., Benson called Bey and told him “it was official. Go collect the money.”<sup>139</sup>

**3. *Bey’s testimonial claims of codefendants’ post-murder statements.***

According to Bey, efforts were made to collect from Rivers after the murders occurred.<sup>140</sup> Bey said Rivers told him the \$25,000 he had was seized by the police during a search warrant, and he was going to sell his truck and tools and try to borrow money from Harry Cook to pay his debt.<sup>141</sup> Eventually, Bey testified that Rivers gave him another \$5,000 payment.<sup>142</sup> This payment was made the same day that an article was circulated in the Delaware News Journal about the murders.<sup>143</sup> The article reported that Chris Rivers, the business partner of the recently killed Joe Connell, was in debt.<sup>144</sup> Bey took the money, and met with Benson at his house.<sup>145</sup> Bey said Benson called Thompson, told him how much the payment was, and upon

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<sup>137</sup> A2179.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> A2180.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*



hearing it was only \$5,000, Thompson, aka “Reep,” said “don’t accept it. Don’t take it.”<sup>146</sup> Benson gave the money back to Bey.<sup>147</sup>

About an hour later, Bey said Benson called him up and told Bey to meet up with Thompson.<sup>148</sup> Bey said he went to Thompson’s girl’s residence, and when he arrived, Thompson was sitting on the porch, reading the newspaper.<sup>149</sup> Bey testified that Thompson was referring to the article in the newspaper, and telling Bey that Rivers had “been playing us the whole time,” and “[Rivers] never had no money from the jump, all this debt...He been playing us from the get-go, from the front, from the beginning...He never had no money.”<sup>150</sup> Bey said Thompson told him “You better tell him, like, he better get that money together or it’s gonna get serious.”<sup>151</sup> Bey said he gave Thompson the \$5,000 payment before leaving.<sup>152</sup>

Bey testified he continued to press Rivers for payment, telling him “that people not playing, they want their money and you gotta figure out cuz they not playing no games, they want their money.”<sup>153</sup> At some point

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<sup>146</sup> A2180-2181.

<sup>147</sup> A2181.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> A2182.

afterwards, Rivers gave Bey a payment of \$2,500 or \$3,000.<sup>154</sup> After that, Bey testified Rivers last payment was \$1,500 one time when Bey stopped by C&S Auto.<sup>155</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

## ARGUMENT

### **I. THE TRIAL COURT PREVENTED RIVERS FROM RECEIVING A FAIR AND IMPARTIAL JURY TRIAL WHEN IT DENIED RIVERS' MOTION FOR CHANGE OF VENUE FROM NEW CASTLE COUNTY DUE TO THE HIGHLY INFLAMMATORY, SENSATIONALIZED MEDIA COVERAGE AND PREJUDICED PUBLIC OPINION OF THE CASE.**

#### QUESTION PRESENTED

Whether the Superior Court's denial of appellant's motion to transfer the trial from New Castle County violated appellant's right to a fair trial by an impartial jury?<sup>156</sup>

#### STANDARD AND SCOPE OF REVIEW

Appellate review of the Superior Court's denial of a motion to transfer venue is for abuse of discretion.<sup>157</sup>

#### ARGUMENT

The trial court's denial of Rivers' motion for change of venue violated Rivers' constitutional right to a fair trial by an impartial jury.

The Sixth Amendment to the United States and Article I, Section 7 of the Delaware Constitution assure criminal defendants a trial by an impartial jury. Superior Court Criminal Rule 21(a) is the provision that applies to criminal defendants in Delaware "to comply with the requirement of the

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<sup>156</sup> A194.

<sup>157</sup> *Powell v. State*, 49 A.3d 1090, at 1097 (Del. 2012).

Sixth Amendment...that in all criminal prosecutions, an accused has a right to trial by an impartial jury.”<sup>158</sup> Superior Court Criminal Rule 21(a) provides as follows:

**(a) For Prejudice in the County.** The court upon motion of the defendant shall transfer the proceeding as to that defendant to another county whether or not such county is specified in the defendant’s motion if the court is satisfied that there exists in the county where the prosecution is pending a *reasonable probability* of so great a prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county [emphasis added].<sup>159</sup>

Interpreting this Rule, which is in accord with the Federal and State constitutional requirements guaranteeing the right to an impartial jury,<sup>160</sup> the Delaware Supreme Court has held that a criminal defendant should “be granted a change of venue upon a showing that there exists a ‘reasonable probability’ or ‘reasonable likelihood’ of prejudice against a petitioner.”<sup>161</sup> Generally, a defendant must show that potential jurors were prejudiced in

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<sup>158</sup> *Parson v. State*, 275 A.2d 777, 785 (Del. 1971).

<sup>159</sup> Super. Ct. Crim. R. 21(a).

<sup>160</sup> “This Court has long held that Superior Court Criminal Rule 21(a) is the provision that applies to criminal defendants in Delaware ‘to comply with the requirements of the Sixth Amendment...that in all criminal prosecutions, an accused has a right to trial by an impartial jury.’” *Powell v. State*, 49 A.3d 1090, 1097 (Del. 2012), citing *Parson v. State*, 275 A.2d 777, 785 (Del. 1971).

<sup>161</sup> *McBride v. State*, 477 A.2d 174, 185 (Del. 1984); citing *Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

fact by pretrial publicity.<sup>162</sup> Such prejudice “may be presumed when a moving party proffers evidence of highly inflammatory or sensationalized media coverage prior to trial.”<sup>163</sup>

### ***A. Evidence of Prejudice Against Christopher Rivers***

#### ***1. Media Coverage***

During the days and weeks following the double homicide in this case, local news media, including television, radio, internet and print journalism, covered the investigation. Sensational and provocative facts and circumstances surrounded the case. Joe and Olga Connell, a young couple, had only been recently married. Joe was a seemingly successful businessman, a partner at C&S Automotive on a main thoroughfare of North Wilmington. The newlyweds, not long after returning from their honeymoon, went to a restaurant with a large group of friends to celebrate Olga’s birthday. Later that night, inexplicably, the two were gunned down in front of their residence. Joe Connell was shot several times in the back of the head, and was found face-down with his cell phone in his hand. These tantalizingly morbid facts coupled with a police investigation with no clear suspects, much less an arrest in the months following the double murder,

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<sup>162</sup> *Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

<sup>163</sup> *McBride v. State*, 477 A.2d at 185; citing *Murphy v. Florida*, 421 U.S. 794, 798-99 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966); *Estes v. Texas*, 381 U.S. 532, 542-43 (1965).

resulted in an inundation of media coverage, locally and nationally. This media included a videotaped interview of Rivers shortly after the killings, that was played on television and available on the internet.<sup>164</sup>

Then, after an investigation spanning nearly a year, Rivers was arrested and charged with the murders on September 3, 2014.<sup>165</sup> Intensification of the media coverage resulted after the arrest, and again, after the proof-positive hearing was held on December 8, 2014.<sup>166</sup> Since the onset of the investigation, and the arrest of Rivers, the following are a sampling of the news reports that flooded the local area, in chronological order:<sup>167</sup>

1. Delawarebeaches.com – *Business partner, friend of Edgemoor murder victim speaks out* – 08/22/2013
2. CBS Philadelphia – *UPDATE: Police ID Newlyweds Murdered At Wilmington Condo* – 08/23/2013
3. Crime Feed – *Newlyweds Murdered, Police Need Leads* – 09/23/2013
4. 6 ABC – *Couple Killed In Edgemoor, Delaware Shooting* – 09/24/2013
5. Dailymail.com – *Mechanic and his new bride shot dead outside their home after returning from friend's party* – 09/24/2013

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<sup>164</sup> A2207-2208.

<sup>165</sup> A1, at D.I. 1.

<sup>166</sup> A176, “*New info: Blockbuster details in Paladin Club killings,*” Delaware News Journal, 12/09/2014.

<sup>167</sup> A51-95.

6. NBC Philadelphia – *Popular Del. Business Owner, Wife Murdered* – 09/27/2013
7. Delaware Business Daily – *Memorial service slated for auto shop owner who died in homicide* – 09/28/2013
8. Azcentral.com – *Business partner shocked over double murder of couple* – 10/08/2013
9. Cincinnati.com – *Business owner shocked over double murder of couple* - 10/09/2013
10. NBC Philadelphia – *2 Men, Including Business Partner, Charged in Murders of Del. Businessman and His Wife* – 09/03/2014
11. Delaware Business Daily – *Co-owner of auto repair shop, accomplice charged with slayings* – 09/03/2014
12. WDEL 101.7 FM – *Two charged in 2013 double murder at Paladin Club* – 09/03/2014
13. Washington Times – *2 charged with killing couple at Wilmington condo* – 09/03/2014
14. CSN Philly – *Third Arrest Made in Double Murder* – 09/06/2014
15. New Castle County Police Department – *Third Suspect Arrested in Double Homicide, Paladin Club Condominiums* – 08/06/2014
16. Delaware 105.9 FM – *UPDATE: 3<sup>rd</sup> Man Charged in Murder-for-Hire Case at Paladin* – 09/08/2014
17. NBC Philadelphia – *Two Men Indicted for Allegedly Killing Married Delaware Couple* – 09/15/2014
18. Newsworks.org – *Two Delaware men charged with year old Paladin Club murders* – 09/15/2014
19. Usattorneys.com – *Secret Guilty Plea in Paladin Murders a very Rare Phenomenon in Delaware* – 12/17/2014

Delaware Online Articles (Chronologically):<sup>168</sup>

20. *Auto shop owner, wife, killed in Edgemoor shooting* – 09/23/2013
21. *Police confirm identities of newlyweds slain outside Paladin Club condominium* – 09/23/2013
22. *Police seeking help in Paladin Club slayings* – 09/23/2013
23. *Double slaying at Paladin Club* – 09/23/2013
24. *Police search dirt at Paladin* – 09/25/2013
25. *Drug charge for partner* – 09/26/2013
26. *Funeral set for auto shop owner killed in Edgemoor shooting* – 09/27/2013
27. *Man charged with steroid possession denies owning them, lawyer says* – 10/01/2013
28. *Parents squabble over auto shop murder victim's estate* – 03/15/2014
29. *2 hit men still sought in Paladin murders* – 09/05/2014
30. *Wilmington man charged as Paladin 'hit man'* – 09/06/2014
31. *1 charged as Paladin Club shooter* – 09/07/2014
32. *Paladin murders may be death penalty case* – 09/11/2014
33. *From country club worker to alleged hit man* – 09/14/2014
34. *2 indicted in Paladin Club murders* – 09/16/2014
35. *Grand jury indicts two in Paladin Club slayings* – 09/16/2014

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<sup>168</sup> A96-183.



36. *Behind the Paladin Club ‘massacre’* (2 Parts) - 10/10/2014

37. *How alleged mastermind unraveled* – 10/13/2014

38. *New info: Blockbuster details in Paladin Club killings* – 12/09/2014

Video:<sup>169</sup>

39. <http://www.dailymail.co.uk/news/article-2430713/Joseph-Olga-Connell-shot-dead-outside-home.html>

40. [http://www.delawareonline.com/article/20130924/NEWS01/309240050/Police-confirm-identities-newlyweds-slain-outside-Paladin-Club-condominium?nclick\\_check=1](http://www.delawareonline.com/article/20130924/NEWS01/309240050/Police-confirm-identities-newlyweds-slain-outside-Paladin-Club-condominium?nclick_check=1)

41. <http://www.delawareonline.com/story/news/crime/2014/10/12/alleged-mastermind-behind-paladin-slayings-unraveled/17155273/>

42. <http://www.delawarebeaches.com/VideoNetwork/2730711099001/Business-partner-friend-of-Edgemoor-murder-victim-speaks-out>

43. <http://www.nbcphiladelphia.com/news/local/Popular-Del-Business-Owner-Wife-Murdered-225437062.html>

44. <http://www.nbcphiladelphia.com/news/local/2-Men-Including-Business-Partner-Charged-in-Murders-of-Del-Businessman-and-His-Wife-273832691.html>

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<sup>169</sup> The proprietary video content of the media sources has not been provided in any physical format in the instant motion as part of the Appendix. The links are being provided here, where the video media coverage can be located on the internet.

45. <http://www.delawareonline.com/story/news/local/2014/09/03/two-face-charges-paladin-club-slayings/15021701/>
46. <http://www.delawareonline.com/story/news/crime/2014/09/13/accused-paladin-hit-man-lengthy-rap-sheet/15581549/>
47. <http://www.delawareonline.com/story/news/crime/2014/12/08/cop-mastermind-pay-paladin-club-hit-men/20101303/>
48. <http://www.delawareonline.com/longform/news/crime/2014/10/12/alleged-mastermind-behind-paladin-slayings-unraveled/17155273/>
49. <http://philadelphia.cbslocal.com/2013/09/23/newlyweds-murdered-at-wilmington-condo/>

## **2. Polling Data**

As the saturation of the media coverage became more evident after the arrest and the months leading to Rivers' trial by a New Castle County jury, defense counsel commissioned a public opinion awareness survey.<sup>170</sup> This survey was conducted by Susquehanna Polling and Research, whereby a poll was taken of 1050 residents of Delaware, 350 from each of Delaware's three counties.<sup>171</sup> The survey consisted of a series of questions conducted by telephone.<sup>172</sup> The first substantive question of the poll was as follows:

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<sup>170</sup> A57-50.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.* at A4. Of these telephonic interviews, 28% were "Live Agent

Q2: Prior to this survey, have you seen, read or heard about the Paladin murder case in Wilmington? This case involves an alleged murder-for-hire plot involving Christopher Rivers, part owner of C&S Automotive repair shop on Route 202, who was arrested and charged with murder for allegedly hiring Joshua Bey and Dominique Benson to kill both his business partner, Joseph Connell and his business partner's wife, Olga Connell?<sup>173</sup>

In response to this question, 39% of New Castle County residents polled answered “yes,” while only 17% of Kent and Sussex County residents answered in the affirmative to this question.<sup>174</sup> Then, 40% of those individuals answered in the affirmative to the next question, “Have you formed an opinion whether or not Christopher Rivers is guilty of committing this murder-for-hire?”<sup>175</sup> Then, those individuals were asked the following question:

Q4: Regarding the Paladin murder case, do you think Christopher Rivers is innocent or guilty? (If innocent or guilty, ask: would you say he is *definitely* or *probably* guilty or innocent...?)<sup>176</sup>

In New Castle County, 53% of those polled answered “Definitely guilty” and 35% answered “Probably guilty.”<sup>177</sup> Then, of those individuals,

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interviews,” while 72% were “Automated/IVR Interviews.”

<sup>173</sup> A47.

<sup>174</sup> *Id.*

<sup>175</sup> A48

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

the follow-up question was posed:

Q5: If you were selected to be a juror for the upcoming trial, on a scale anywhere from 1 to 5 how likely is it your opinion could be changed (where 1 means it's very likely your opinion could be changed, and 5 means it's very unlikely your opinion could be changed)?<sup>178</sup>

In New Castle County, 22% of those polled answered “Somewhat unlikely,” and 23% answered “Very unlikely,” for a total of 45%.<sup>179</sup>

***B. Analysis of the Prejudicial Effect of the Media Coverage Against Christopher Rivers***

The extensive media coverage in the instant case prejudiced Rivers from receiving an impartial jury in New Castle County. A criminal defendant should be granted a change of venue upon a showing that there exists a “reasonable probability” or “reasonable likelihood” of prejudice against a petitioner.<sup>180</sup> As a general rule, a defendant must show that potential jurors were prejudiced in fact by pretrial publicity.<sup>181</sup> Prejudice may be presumed when a moving party proffers evidence of highly inflammatory or sensationalized media coverage prior to trial.<sup>182</sup> In determining the appropriateness of an application to change venue, courts

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<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *McBride v. State*, 477 A.2d 174, 181 (Del. 1984); *See Gordon v. Justice Court for Yuba J.D. of Sutter County*, Cal. Supr. 525 P.2d 72, 76 (1974).

<sup>181</sup> *Irvin v. Dowd*, 366 U.S. 717, 728 (1961).

<sup>182</sup> *Muryphy v. Florida*, 421 U.S. 794, 798-99 (1975); *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966); *Estes v. Texas*, 381 US. 532, 542-43 (1965).

gauge the likelihood of the accused receiving a fair trial by analyzing the degree and probability of prejudice.<sup>183</sup> In making this judgment, courts focus on a variety of criteria, including the nature of the publicity,<sup>184</sup> the degree of circulation of the hostile publicity,<sup>185</sup> the severity and notoriety of the charges,<sup>186</sup> and the size of the community from which the jury will be chosen.<sup>187</sup>

In this case there was an abundance of media coverage that had inundated the community. The articles themselves were highly inflammatory, reporting the grisly details of a cold-blooded double murder of newly-weds that was an alleged murder-for-hire. These articles were considerably more than simply ‘informational,’ carrying sensationalized titles such as “How Alleged Mastermind Unraveled,”<sup>188</sup> and “New Info: Blockbuster Details in Paladin Club Killings,”<sup>189</sup> and “Behind the Paladin Club ‘massacre’.”<sup>190</sup> This inflammatory nature of the publicity, and pervasive circulation of the hostile publicity, the severity and notoriety of

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<sup>183</sup> *McBride v. State*, 477 A.2d 174 (Del. 1985); *Riley v. State*, 496 A.2d 997 (Del. 1985).

<sup>184</sup> *U.S. v. McVeigh*, 918 F. Supp. 1467 (W.D. Ok. 1996).

<sup>185</sup> *Commonwealth v. Smith*, 434 A.2d 115 (Pa. Super. 1981).

<sup>186</sup> *State v. Rodrigue*, 441 So.2d 1274 (La. App. 1983).

<sup>187</sup> *People v. Tidwell*, 473 P.2d 748 (Cal. 1970).

<sup>188</sup> A170.

<sup>189</sup> A176.

<sup>190</sup> A145.

the charges involved, and the relative small size of New Castle County leads to the conclusion that Rivers was not able to get a fair and impartial jury in New Castle County.

More importantly, the empirical data from the polling survey shows that this inundation of sensationalized media coverage critically prejudiced Rivers from receiving an impartial jury in New Castle County. More than a third of the New Castle County residents polled, 39%, had either seen, read, or heard about this double murder case.<sup>191</sup> In contrast, 17% of Kent and Sussex County residents had responded in the affirmative to the same question.<sup>192</sup> Then, of those New Castle County residents that were familiar with the case, 40% of those individuals had formed a preconceived opinion of the case.<sup>193</sup> A staggering majority of those residents who had formed a preconceived opinion presumed that Rivers was guilty.<sup>194</sup> And of those New Castle County residents, nearly half, 45% of them, fundamentally indicated that they would not be impartial in any event.<sup>195</sup> In sum, this empirical data supports the proposition that the media coverage in this case was not only

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<sup>191</sup> A47.

<sup>192</sup> *Id.*

<sup>193</sup> A48.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

pervasive, but effectively prejudiced Rivers from the possibility of getting a fair and impartial jury in New Castle County.

***C. Distinguished from the Powell case***

The instant case is distinguishable from this Court’s recent decision in *Powell*.<sup>196</sup> In *Powell*, the defendant was charged with killing a police officer in the line of duty in Sussex County.<sup>197</sup> It was a highly publicized case, and the trial court denied the defendant’s motion to transfer the case from Sussex County.<sup>198</sup> That ruling was upheld by this Court.<sup>199</sup>

In affirming the trial court in *Powell*, this court cited several bases for the decision. First, in *Powell*, there was individual *voir dire* conducted as it was a capital case, and “no prejudice was developed during the *voir dire* process.”<sup>200</sup> In this case there was also individual *voir dire*, but the trial court’s *voir dire* did not sufficiently remedy the issue. The trial court denied defendant’s counsel’s *voir dire* submission which was designed to elicit in more detail any prejudice a potential juror may have had about the case due

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<sup>196</sup> *Powell v. State*, 49 A.3d 1090 (Del. 2012).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 1097.

to the sensationalized media coverage.<sup>201</sup> The *voir dire* submitted on Rivers' behalf started with the following questions:

1. This case has been frequently referred to as the Paladin Club murder case, in which a local man, Christopher Rivers, part owner of C&S Automotive repair shop, on Route 202, was arrested and charged in this case with allegedly hiring other men, Joshua Bey, Dominique Benson, and Aaron Thompson, to kill his business partner, Joseph Connell, and his wife, Olga Connell. Have you read or heard anything concerning this case through the news media including, but not limited to, television, radio, newspaper, or the internet or any other sources? If "yes", then:
  - a. When did you read or hear about this case?
  - b. What do you recall having read or heard about this case?
  - c. Did you discuss with anyone else what you read or heard about this case?
  - d. Have you read about, seen or heard about Joseph Connell or Olga Connell?
  - e. If so, what have you read about, seen or heard of Joseph Connell or Olga Connell?
  - f. Have you read about, seen or heard of Christopher Rivers?
  - g. If so, what you have read about, seen or heard about Christopher Rivers?
  - h. Have you read about, seen or heard of Joshua Bey?
  - i. If so, what have you read about, seen or heard about Joshua Bey?
  - j. Have you read about, seen or heard of Dominique Benson?
  - k. If so, what have you read about, seen or heard about Dominique Benson?
  - l. Have you read about, seen or heard of Aaron Thompson?
  - m. If so, what have you read about, seen or heard about Aaron Thompson?
2. Have you read about, seen or heard of a case in which a

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<sup>201</sup> A704.



couple was found shot to death outside of their condominium at the Paladin Club Condominium complex in Wilmington, Delaware?

3. Have you formed an opinion whether Christopher Rivers is guilty or not guilty based on what you read or heard through the news media or discussed with anyone else?
4. Would anything you have read or heard about this case through the news media or elsewhere make it difficult for you to render a fair and impartial decision in the case, based on the evidence introduced at the trial and the instructions on the law which I will give you?<sup>202</sup>

Rather, the *voir dire* adopted by the trial court avoided probing too deeply into potential jurors' knowledge or recollection of the case. Instead, the trial court's *voir dire* addressed the case in a more general approach:

This case has been frequently referred to as the Paladin Club murder case, in which a local man, Christopher Rivers, part owner of C&S Automotive Repair, on Route 202, was arrested and charged in this case with allegedly hiring other men—Joshua Bey, Dominique Benson, and Aaron Thompson—to kill his business partner, Joseph Connell, and his wife, Olga Connell. This is the trial of Christopher Rivers and Dominique Benson. The trial in this case will actually begin next Monday and the parties estimate that it will take 6 weeks. Aaron Thompson will be tried separately at a later date. Joshua Bey has pled guilty to charges stemming from this incident.

If you have heard anything about this case – and we assume you have – would anything you have read or heard about this case through the news media or elsewhere make it difficult for you to render a fair and impartial decision in the case, based on the evidence introduced at trial and the instructions on the law which I will give you?

Have you formed an opinion whether Christopher Rivers and/or Dominique Benson is guilty or not based on what you

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<sup>202</sup> *Id.*

read or heard through the news media or discussed with anyone else?...

...Do you or any member of your immediate family know the defendants, Christopher Rivers, Dominique Benson, or Aaron Thompson, or any of their friends, family, or co-workers?

Do you or any member of your immediate family know the decedents, Joseph Connell, or Olga Connell, or any of their friends, family, or co-workers?

...As mentioned previously, part of the evidence in this case involves C&S Automotive Repair. Do you have any relationship with C&S Automotive Repair that might affect your ability to render a fair and impartial verdict based upon the evidence and the law?...<sup>203</sup>

In explaining the ruling denying the defendant's more specific and detailed proposed *voir dire* at the March 28, 2016 pretrial conference, the trial court stated:

I am not a fan of open-ended invitations for each juror to come up and tell me their life story, so you'll see some of this clipped down or at least focused to the question of whether or not it would impact their ability to be fair and impartial, not have they generally heard about the case...I think we can take it on faith that they may have heard about this case; that's not really the issue. To invite them back one-by-one, probably 100-plus people to tell me what they've heard about the case is a supreme waste of time. So I'm going to focus that down to assuming you have heard something about the case, can you be fair and impartial.<sup>204</sup>

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<sup>203</sup> A722 (Trial Court's proposed *voir dire* provided prior to trial) A741-742 (April 8, 2016 trial transcript of trial court's actual recitation of *voir dire* to jury pool).

<sup>204</sup> A203.

Here, the *voir dire* used by the trial court was insufficient to root out prejudicial jurors.

Another basis of the *Powell* decision that is distinguishable from this case is the poll data. In the instant case, 40% of the individuals in New Castle County who had heard about the case through the media had formed an opinion,<sup>205</sup> and of those, the vast majority presumed Rivers was guilty.<sup>206</sup> 53% of those who had formed an opinion of Christopher Rivers' guilt or innocence in New Castle County believed Rivers was "definitely guilty"<sup>207</sup> and 35% believed that Rivers was "probably guilty."<sup>208</sup> The difference from the *Powell* case is that of the aforementioned New Castle County residents, who had heard of the case and formed an opinion in the instant case, 22% of those were "somewhat unlikely" their opinion could be changed and 23% were "very unlikely" their opinion could be changed, for a total of 45%.<sup>209</sup> This is distinguished from *Powell*, where although a "...high percentage of those polled believed Powell was probably or definitely guilty of Officer

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<sup>205</sup> A48.

<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

Spicer's murder..." the "same number of polled persons also believed that, were they selected for the jury, they 'could be fair and impartial.'"<sup>210</sup>

In sum, unlike *Powell*, the polling data shows that "[t]he community and media...reaction [was] so hostile and so pervasive as to make it apparent that even the most careful *voir dire* process would be unable to assure an impartial jury."<sup>211</sup>

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<sup>210</sup> *Powell*, A.3d at 1098-99.

<sup>211</sup> *Id.* at 1099, citing *Flamer v. State*, 68 F.3d 736, 754 (3d Cir. 1995).

**II. THE SUPERIOR COURT ABUSED ITS DISCRETION BY ALLOWING ALLEGED CODEFENDANTS' STATEMENTS MADE AFTER THE MURDERS WERE COMMITTED TO BE ADMITTED AT TRIAL PURSUANT TO THE CO-CONSPIRATOR HEARSAY EXCEPTION UNDER D.R.E. 801(d)(2)(E) BECAUSE THE STATEMENTS WERE NOT MADE DURING THE FURTHERANCE OF THE CONSPIRACY.**

QUESTION PRESENTED

Whether the Superior Court erred in admitting the codefendants' hearsay statements, allegedly made after the murders were committed, at trial?<sup>212</sup>

STANDARD AND SCOPE OF REVIEW

Appellate review of the trial court's evidentiary ruling is for abuse of discretion.<sup>213</sup> Alleged constitutional violations pertaining to a trial court's evidentiary rulings are reviewed *de novo*.<sup>214</sup>

ARGUMENT

The Superior Court erred in admitting statements allegedly made by the codefendants after the commission of the charged murders at trial. D.R.E. 801(d)(2)(e) provides the following:

A statement is not hearsay if ...[t]he statement is offered against a party and is ... a statement made by a co-conspirator

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<sup>212</sup> A698-702.

<sup>213</sup> *Allen v. State*, 878 A.2d 447 (Del. 2005); *Fuller v. State*, 860 A.2d 324, 329 (Del. 2004).

<sup>214</sup> *Hall v. State*, 778 A.2d 118, 123 (Del. 2001) (citing *Warren v. State*, 774 A.2d 246, 251 (Del. 2001)).

of a party during the course and in furtherance of the conspiracy[.]” In order to fall under this exclusion, the offering party must show by a preponderance of the evidence that: “1) a conspiracy existed; 2) the co-conspirator and the defendant against whom the statement is offered were members of the conspiracy; and 3) the statement was made during and in furtherance of the conspiracy.”<sup>215</sup>

“Duration of a conspiracy depends on the fact-specific scope of the original agreement, but generally a conspiracy terminates upon accomplishment of the original objective unless specific evidence is introduced indicating that the scope of the original agreement included acts taken to conceal the criminal activity.”<sup>216</sup> A declaration made by a co-conspirator after termination of the conspiracy is inadmissible under the co-conspirator exclusion against any co-conspirator other than the declarant.<sup>217</sup>

In the instant case, the alleged “primary objective”<sup>218</sup> of the codefendants was the murders of Joseph and Olga Connell, and the codefendants’ statements were made after the fact. Once the principal objective is achieved, “generally a conspiracy terminates...unless specific evidence is introduced indicating that the scope of the original agreement

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<sup>215</sup> *Lloyd v. State*, 534 A.2d 1262, 1264 (Del. 1987).

<sup>216</sup> *Smith v. State*, 647 A.2d 1083, 1089 (Del. 1994).

<sup>217</sup> *Lutwak v. United States*, 344 U.S. 604, 617 (1953); *Krulewitch v. United States*, 336 U.S. 440, 443 (1949).

<sup>218</sup> *Smith v. State*, 647 A.2d 1083, at 1089 (Del. 1994).

included acts taken to conceal the criminal activity.”<sup>219</sup> The statements the State introduced did not fall under this category of concealment or otherwise, and should be deemed inadmissible.

Moreover, the introduction of the codefendants’ statements on the premise that the alleged arrangement of payments for the murders had not been made would result in the never-ending conspiracy exception condemned by the Supreme Court in *Grunewald v. United States*:

The crucial teaching of *Krulewitch* and *Lutwak* is that after the central criminal purposes of a conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and the conspirators took care to cover up their crime in order to escape detection and punishment. As was there stated, allowing such a conspiracy to conceal to be inferred or implied from mere overt acts of concealment would result in a great widening of the scope of conspiracy prosecutions, *since it would extend the life of a conspiracy indefinitely*.<sup>220</sup> [emphasis added]

Here, although the statements the State introduced were not concerned with concealment as was the case in *Grunewald*, it results in the same unacceptable conclusion that the conspiracy continues *ad infinitum*. For example, Bey claims during his testimony that in exchange for the murders of the Connells, Rivers agreed to pay Bey “\$2,000 a month”<sup>221</sup> for the rest of

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<sup>219</sup> *Id.*

<sup>220</sup> *Grunewald v. United States*, 353 U.S. 391, 401-402 (1957).

<sup>221</sup> A2169.

[Bey's] life, to which Bey replied "...I'm gonna hold you up to that \$2,000 a month..."<sup>222</sup> Under the State's theory, the conspiracy would conceivably continue for the duration of the alleged co-conspirators' lives. This is the sort of open-ended scope the Supreme Court held unacceptable in *Grunewald*: "Sanctioning the Government's theory would for all practical purposes wipe out the statute of limitations in conspiracy cases, as well as extend indefinitely the time within which hearsay declarations will bind co-conspirators."<sup>223</sup> Similarly, the State's reliance on Bey's accounts that the alleged \$60,000 agreed amount had never been fulfilled by Rivers conveniently extends the scope of the conspiracy in perpetuity as well, an equally unacceptable result under *Grunewald*.

Even if the conspiracy was an open-ended, ongoing plot, the admission of the statements were in error. In *Smith v. State*, this Court held that the duration of a conspiracy is contingent on the "fact-specific scope of the original agreement," but typically terminates upon completion of the principle objective of the conspiracy.<sup>224</sup> This Court recognized, however, a limited exception to the rule: a conspiracy can extend beyond that only if the State adduces specific evidence that indicates that "the scope of the original

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<sup>222</sup> *Id.*

<sup>223</sup> *Grunewald*, 353 U.S. at 402.

<sup>224</sup> 647 A.2d 1083, 1089 (Del. 1994).



agreement included acts taken to conceal the criminal activity.”<sup>225</sup>

A “murder-for-hire” conspiracy, like all other conspiracies, terminates upon accomplishment of the plot’s principle objective—the murder of the intended victim.<sup>226</sup> Absent specific evidence that the scope of the original conspiracy between the alleged conspirators in this case included acts taken to conceal the criminal activity, the State’s argument that the conspiracy extended beyond that point fails.

Furthermore, the trial court’s erroneous admission of these statements were extremely prejudicial to Rivers. After Bey had given police two other versions of events, it was this final alleged ‘murder-for-hire’ version that got Bey his sweetheart plea deal with the State. Then, by allowing Bey to testify to Benson and Thompson’s attempts to collect from Rivers through Bey, some of which were arguably hearsay within hearsay,<sup>227</sup> had the appearance of corroboration of Bey’s final version of events to the jury, prejudicing

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<sup>225</sup> *Id.*

<sup>226</sup> *See, e.g., United States v. Hernandez*, 141 F.3d 1042 (11th Cir. 1998) (“As we have stated, ‘a conspiracy’s duration is difficult to prove precisely, but generally continues until its purposes have either been abandoned or accomplished.’ In other words, ‘the conspiracy may be deemed to continue as long as its purposes have neither been abandoned nor accomplished.’ Accordingly, the murder-for-hire conspiracy in this case was complete when [the victim] was murdered.”).

<sup>227</sup> A2180-2181. Bey testified Benson called Thompson, told him how much the payment was, and upon hearing it was only \$5,000, Thompson, aka “Reep,” said “don’t accept it. Don’t take it.”

Rivers right to a fair trial. In sum, the trial court abused its discretion in admitting the codefendants' post-murder hearsay statements at trial.

## CONCLUSION

Based on the foregoing, Appellant Christopher Rivers respectfully requests that this Court grant him a new trial and any other relief the Court deems appropriate.

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Attorneys for Appellant

Dated: July 18, 2017

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

103

VS.

CHRISTOPHER J RIVERS

Alias: CHRISTOPHER RIVERS

DOB: 09/17/1982

SBI: 00454488

CASE NUMBER:

N1409001584

IN AND FOR NEW CASTLE COUNTY

CRIMINAL ACTION NUMBER:

IN16-02-1292

MURDER 1ST(F)

IN16-02-1294

MURDER 1ST(F)

IN16-02-1293

PFDCF(F)

IN16-02-1295

PFDCF(F)

IN16-02-1297

CRIM SOLIC 1ST(F)

IN16-02-1296

CONSP 1ST(F)

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2016 OCT 12 PM 2:14

COMMITMENT

Nolle Prosequi on all remaining charges in this case

SENTENCE ORDER

NOW THIS 7TH DAY OF OCTOBER, 2016, IT IS THE ORDER OF THE COURT THAT:

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

AS TO IN16-02-1292- : TIS  
MURDER 1ST

Effective September 3, 2014 the defendant is sentenced as follows:

- The defendant is placed in the custody of the Department of Correction for the balance of his/her natural life at supervision level 5

AS TO IN16-02-1294- : TIS  
MURDER 1ST

- The defendant is placed in the custody of the Department of Correction for the balance of his/her natural life at

\*\*APPROVED ORDER\*\* 1 October 10, 2016 15:48

CERTIFIED AS A TRUE COPY

ATTEST: STEPHEN AGNEW

BY Mahtab Mead

STATE OF DELAWARE  
VS.  
CHRISTOPHER J RIVERS  
DOB: 09/17/1982  
SBI: 00454488

supervision level 5

AS TO IN16-02-1293- : TIS  
PFDCF

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5

AS TO IN16-02-1295- : TIS  
PFDCF

- The defendant is placed in the custody of the Department of Correction for 20 year(s) at supervision level 5

AS TO IN16-02-1297- : TIS  
CRIM SOLIC 1ST

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

AS TO IN16-02-1296- : TIS  
CONSP 1ST

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

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE

VS.

CHRISTOPHER J RIVERS

DOB: 09/17/1982


SBI: 00454488

CASE NUMBER:

1409001584

All financial obligations for this case are deemed uncollectible.

FILED NO. PRO. 10/10/16  
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JUDGE CHARLES E BUTLER

FINANCIAL SUMMARY

STATE OF DELAWARE  
VS.  
CHRISTOPHER J RIVERS  
DOB: 09/17/1982  
SBI: 00454488

CASE NUMBER:  
1409001584

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	6.00
DELJIS FEE ORDERED	6.00
SECURITY FEE ORDERED	60.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	90.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	
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TOTAL	362.00

\*\*APPROVED ORDER\*\*

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October 10, 2016 15:48