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Case Number 73,2017

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RUSSELL M. GRIMES,	)	
	)	
Defendant Below-Appellant,	)	No. 73, 2017
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-Appellee.	)	

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

STATE'S ANSWERING BRIEF RESPONDING TO AMICUS CURIAE

John Williams (#365)
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19904-6750
(302) 739-4211 (ext. 3285)
JohnR.Williams@State.de.us

DATE: February 7, 2018

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NATURE AND STAGE OF THE PROCEEDINGS

On January 8, 2018 amicus curiae filed an Opening Brief in this pending direct appeal. This is the State's Answering Brief responding to the arguments of amicus curiae.

SUMMARY OF ARGUMENT

I. DENIED. The retrial of defendant Russell Grimes for first degree robbery is not prohibited by the Fifth Amendment Double Jeopardy Clause. It is not an impermissible successive prosecution because the 2013 initial conviction was reversed on appeal in 2015. Second, Grimes was not being charged at the 2016 retrial with multiple offenses under separate statutes in connection with the robbery reprosecution. Finally, as to the robbery Grimes was not charged multiple times under the same statute.

Poteat v. State, 840 A.2d 599, 606 (Del. 2003) is a sentencing merger decision that is of no assistance to Grimes' attempt to utilize double jeopardy as a sword to prevent his retrial for first degree robbery.

II. DENIED. The conviction for first degree robbery is valid and there is no basis to vacate the companion conviction for possession of a firearm during the commission of the robbery felony.

STATEMENT OF FACTS[1]

It was raining on Friday afternoon, August 26, 2011, as Hurricane Irene approached Felton, Delaware. (B-7, 22). A little before 5 P. M. that day (B-11, 13), a tall man wearing a gray hooded sweatshirt, a dark mask over his face, and gloves came running into the First National Bank of Wyoming branch in Canterbury. (B-7-8, 12). The man, later identified as William S. Sells, III, was yelling and cursing, and he had a black handgun and a satchel. (B-8, 12). The bank's video camera captured the bank robbery on film, and still photos of the crime were presented at the November 2016 Kent County Superior Court jury retrial of Russell M. Grimes. (B-8). In one of the photographs bank robber William Sells is shown pointing a pistol at Vicki Ebaugh, the branch manager. (B-7-8).

At gunpoint the masked robber ordered Ebaugh and her assistant manager Tiffany Lang out of Ebaugh's office and Sells used profanity. (B-8). Ebaugh went behind the teller line, and robber Sells jumped over the line. (B-8-9). The masked robber demanded that Ebaugh open the teller drawers (B-9), and he said no dye pack, bait money, or GPS. (B-9, 12). Three tellers, branch manager Ebaugh, and assistant manager Lang were all present behind the teller line during the 2011

[1] A recitation of the pertinent facts is also contained in the 2015 direct appeal of former co-defendant William S. Sells, III at Sells v. State, 109 A.3d 568, 571 (Del.

robbery. (B-9). No customers were inside the bank (B-9), but two customers in vehicles were outside the bank at the drive-thru window. (B-9, 15).

The masked robber removed money from three teller drawers. (B-9-10,12). The teller drawers contained both red dye packs and bait money. (B-10). The dye packs explode if removed a certain distance from the bank and mark the paper money with red dye. (B-10). Two other bank tellers, Jessica Gedney and Mary Ann Emig, escaped during the robbery by running out the side door. (B-10, 13-14). Lindsay Chasanov, the head teller that afternoon (B-11), recalled that the robber used very vulgar language (B-12), and she was afraid that he was going to shoot her. (B-12). The robber took between $50,000 and $56,000 from the bank, ran out the front door, and left in a dark-colored SUV. (B-11).

Jessica Gedney, another bank employee (B-13), testified that, "Well, I heard a male's voice yelling to put your hands up, to get off the phone. Just I could tell we were being robbed." (B-13). Gedney fled by running out a side door of the bank. (B-10, 14). She stated, "Yes, I ran out that side door and I was chased. And as I was running out the door, he yelled to get back, but I still went out." (B-14). Gedney saw that the robber "had a gun." (B-14). While outside, Gedney observed a black SUV on Irish Hill Road "with red smoke coming out, which I knew that that was the dye packs." (B-14).

2015).

Elizabeth Cole was making a deposit at the drive-thru window a little before 5 P.M. on August 26, 2011, when she observed the robber inside the bank. (B-15). Cole stated, "I was able to see Vicki, the bank teller, standing there pale, and I was able to see the bank robber with a gray, hooded sweatshirt, and I knew right then and there that it was a robbery." (B-15). Cole pulled her vehicle out of the bank lot and called 911 to report the robbery. (B-15). From the bank Cole drove to the nearby Shore Stop convenience store where she saw a black SUV behind her. (B-16). At the Shore Stop, Cole observed a black hand coming out the passenger side of the black SUV, and ". . . there was a big bag hanging out the window and it was opened, and there was money coming out as they were driving." (B-16). Inside the SUV, Cole saw two people, "a driver and a passenger." (B-16). On cross-examination, Cole added: "I believe I saw a gun. I did fear for my life." (B-16).

At approximately the same time that afternoon, Officer Keith Shyers, the Deputy Chief of the Harrington Police Department, was arriving at the same Canterbury Shore Stop convenience store. (B-18-19). Shyers was driving an unmarked Dodge Charger automobile equipped with police lights and a siren. (B-19). Officer Shyers also observed the black SUV with a passenger hanging out the window, as well as a poof of red smoke. (B-20).

The police officer heard a KENTCOM broadcast on his police car radio that a bank robbery had just occurred at the nearby branch of the First National Bank of

Wyoming. (B-20). At the time Shyers was following the black SUV because he thought there was something suspicious, and the officer radioed KENTCOM that he was behind the suspected getaway vehicle. (B-20). A second police officer, Sergeant Christopher Swan of the Felton Police Department, also heard the radio report of a robbery at the Canterbury bank. (B-25).

On Evans Road, Sergeant Swan joined the pursuit of the black SUV. (B-25). Swan was operating an unmarked blue Chevrolet Impala, and he got behind Keith Shyers in the police pursuit. (B-21, 25). The weather was misty and the roads were wet. (B-22). At a stop sign on Tomahawk Road, the black SUV suddenly stopped, a passenger got out of the fleeing vehicle, and the passenger began firing 5 or 6 shots at both Shyers and Swan. (B-22, 24-25). Shyers was less than a car length away when the black SUV passenger began shooting. (B-22). After shooting at the two pursuing police officers, the passenger got back in the vehicle, and the SUV drove away. (B-26). Sergeant Swan noted that the SUV driver did not drive away when his passenger got out and began shooting at the police. (B-26).

As the black SUV drove away, Shyers activated the police lights and siren in his vehicle. (B-22). Similarly, when Swan turned on his emergency equipment, his vehicle's video camera began recording the continuing pursuit of the bank robber. (B-26). A hurricane was coming, and it was raining as the two police officers

(Shyers and Swan) continued chasing the bank robber on Kent County back roads. (B-26).

Three other State Police Officers (Michael Wheeler, William Killen, and Scott Torgerson) later joined the continuing pursuit of the getaway SUV in separate vehicles. (B-23, 28-30, 32). Shyers estimated that the police pursuit of the bank robbery getaway vehicle continued for 12 to 20 miles. (B-23). Numerous police vehicles were now involved in the pursuit of the black SUV when the SUV passenger stood up in the sun roof and began firing back at the trailing police cars. (B-23, 26, 29). Throughout the chase, Sergeant Swan observed the SUV passenger stand up in the sun roof numerous times and shoot at the following police vehicles. (B-26). The video recording of the police pursuit made in Swan's car was introduced at Grimes' retrial as State's Exhibit # 17. (B-27).

During the SUV pursuit, State Police Corporal Scott Torgerson, who was driving a fully-marked State Police car (B-27), replaced Shyers as the lead police pursuit vehicle. (B-23). Shyers' vehicle was struck several times by gunfire. (B-23-24). A bullet entered the hood of Shyers' vehicle (B-24), and he began losing tire pressure when another shot struck his tire. (B-23). As Shyers' tire was going flat, he had to pull off the roadway and abandon the pursuit. (B-26). Shyers testified that when the SUV passenger got out of the vehicle at the stop sign, the shooter fired 5 or 6 times. (B-24). Bullets from the SUV also struck Swan's

windshield (B-26), and the front passenger fender of Trooper Killen's Crown Victoria. (B-29). Killen observed that the driver of the fleeing SUV was a black male with a light beard. (B-30).

The police pursuit of the black SUV ended near Willow Grove when the getaway vehicle left the roadway and got stuck in a ditch. (B-27). Corporal Torgerson, the first officer on the scene, noted that the ditch was grassy and the back tires of the SUV were spinning. (B-31). Torgerson observed two people in the now stuck SUV. (B-31). Suddenly, both doors of the SUV flew open, and the two occupants ran in different directions. (B-32).

Russell M. Grimes got out of the driver's side of the SUV, and he was the suspect closest to Corporal Torgerson. (B-32). Sergeant Swan observed Torgerson fire his weapon, and one of the fleeing suspects went down. (B-27). Grimes was running away when Torgerson shot him in the leg, and Grimes fell to the ground. (B-32). The other suspect continued to flee and could not be apprehended at the end of the chase scene. (B-32). When Torgerson approached Grimes to place him in handcuffs, Grimes stated: "Why did you shoot me? I was just the driver." (B-32). Grimes did not tell the arresting police officer that he was driving the SUV against his will. (B-32). When apprehended, Grimes gave the police a false name. (B-42).

A subsequent search of the black Ford Explorer SUV Grimes drove into a ditch revealed $1,827 in United States currency and three handguns inside the vehicle. (B-34-37). There was red dye on the car currency (B-38), and the three handguns were a Beretta 9 millimeter, a Keltec 9 millimeter, and a Charter .38 Special. (B-34-36). The .38 caliber weapon was found on the front passenger seat. (B-36). An additional $1,386 in United States currency was recovered from the Canterbury Shore Stop parking lot on August 26, 2011. (B-33).

Although Grimes did not testify at his 2013 first joint trial with William Sells, Grimes did testify in his own defense at his November 2016 Superior Court retrial. (B-40-42). On cross-examination, Grimes was impeached with several of his prior convictions. (B-41). Grimes testified that he purchased the black Ford Explorer from Sells for $1,500. (B-40). Sells asked Grimes to drive him to the bank. (B-40). Grimes claimed that he thought Sells was going to deposit the $1,500 vehicle purchase price, and he was unaware of any bank robbery until Sells returned to the vehicle and pointed a gun at Grimes. (B-40).

Testifying as the first witness at the 2016 retrial was Berlinda Washington. (B-2-6). Washington said Grimes is the father of her 7 year old daughter. (B-2). According to Washington, she is familiar with Grimes' handwriting, and she identified that handwriting in letters Grimes sent her from prison after the 2011 bank robbery. (B-2). Washington interpreted one of Grimes' letters referring to

"25 stacks" as his share of the bank robbery proceeds as meaning that Grimes was to receive $25,000 from the Canterbury bank robbery. (B-3).

I. RECONVICTION FOR ROBBERY DID NOT VIOLATE DOUBLE JEOPARDY

QUESTION PRESENTED

At a retrial could the defendant be retried for first degree robbery for which he was convicted at the first trial?

STANDARD AND SCOPE OF REVIEW

"Appeals of constitutional issues generally receive de novo review." Nance v. State, 903 A.2d 283, 285 (Del. 2006) (citing Abrams v. State, 689 A.2d 1185, 1187 (Del. 1997)).

MERITS OF THE ARGUMENT

In May 2013, Russell M. Grimes and co-defendant William S. Sells, III were jointly tried for the August 26, 2011 robbery of the First National Bank of Wyoming in Felton, Delaware. Sells v. State, 109 A.3d 568, 571, 575 (Del. 2015). The jury found Sells guilty of first degree robbery, possession of a firearm during the commission of a felony, possession of a firearm by a person prohibited, wearing a disguise during the commission of a felony, six counts of aggravated menacing, and five counts of second degree reckless endangering. Sells, 109 A.3d at 570. The same 2013 Superior Court jury found Grimes guilty of nine offenses (first degree robbery, second degree conspiracy, possession of a firearm during the commission of a felony, possession of a firearm by a person prohibited, and five

counts of second degree reckless endangering). (Docket Sheet at 12, included in May 1, 2017 Appendix to Grimes' pro se Opening Brief in this appeal). The first jury on May 28, 2013 found Grimes not guilty of six counts of aggravated menacing. Id.

Grimes' 2013 convictions were reversed by this Court on May 12, 2015. Grimes v. State, 2015 WL 2231801, at * 1 (Del. May 12, 2015). After a November 2016 retrial, a new Superior Court jury again convicted Grimes of the same nine offenses for which he was previously convicted on May 28, 2013. (Docket Entries at 25-26).

In this appeal of the 2016 retrial convictions, both pro se appellant Grimes and amicus curiae appointed by Order of this Court on November 8, 2017 argue that Grimes' 2016 reconviction for first degree robbery violates the double jeopardy protection of the Fifth Amendment to the United States Constitution. The 2016 reconviction of Grimes for first degree robbery does not violate the constitutional double jeopardy protection and all nine of Grimes' convictions after retrial should be affirmed.

Relying upon the finding in Poteat v. State, 840 A.2d 599, 601 (Del. 2003) that "Aggravated Menacing is a lesser-included offense of Robbery in the First Degree," both Grimes and amicus curiae agree that because Vicki Ebaugh, the bank branch manager in 2011, is listed as the victim for both the robbery and one of the

aggravated menacing charges on which Grimes was acquitted at the first trial in 2013, the constitutional double jeopardy protection prohibited the 2016 retrial of Grimes for the first degree robbery charge.

"The Double Jeopardy Clause of the Fifth Amendment, applicable to the States through the Fourteenth, provides that no person shall 'be subject for the same offense to be twice put in jeopardy of life or limb.'" Brown v. Ohio, 432 U.S. 161, 164 (1977). The Fifth Amendment Double Jeopardy Clause "protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." North Carolina v. Pearce, 395 U.S. 711, 717 (1969). "Article I, Section 8 of the Delaware Constitution contains the same language as the Fifth Amendment and operates similarly." Johnson v. State, 5 A.3d 617, 620 (Del. 2010). See also Monroe v. State, 652 A.2d 560, 567 (Del. 1995); 11 Del. C. § 207.

Stated somewhat differently, "Double Jeopardy, as a constitutional principle, provides the following protections: (1) against successive prosecutions; (2) against multiple charges under separate statutes; and (3) against being charged multiple times under the same statute." Williams v. State, 796 A.2d 1281, 1285 (Del. 2002). See also Nance v. State, 903 A.2d 283, 286 (Del. 2006).

In Poteat v. State, 840 A.2d 599 (Del. 2003), Raheem Poteat and three co-defendants robbed a Newark liquor store at gunpoint. The two store owners and a customer inside the store were all threatened at gunpoint and robbed. On appeal, this Court found that the separate sentencing of Poteat for three counts of first degree robbery and three counts of aggravated menacing violated the third protection of the U.S. Constitution Fifth Amendment guarantee against "multiple punishments for the same offense." Poteat, 840 A.2d at 603. This Court stated:

> . . . we conclude that the General Assembly intended for Aggravated Menacing to be a lesser-included offense of Robbery in the First Degree. Therefore, we hold that the convictions for those separate crimes during the same occurrence must be merged. Consequently, under the facts of this case, we hold that sentencing Poteat separately for each of those crimes violated the protection against double jeopardy that is provided by the Fifth Amendment to the United States Constitution.

Poteat, 840 A.2d at 606.

While both Grimes and amicus curiae are attempting to use Poteat as a double jeopardy sword to prohibit a successive robbery reprosecution after this Court's 2015 reversal, the effort is misplaced. Poteat is a sentencing merger case based upon the third double jeopardy protection against multiple punishments for the same offense. Poteat does not involve the first double jeopardy protection against a successive prosecution for the same offense after an acquittal. The first double jeopardy protection against successive prosecutions has no application to

Grimes because Grimes was convicted, not acquitted, of first degree robbery in the first 2013 trial.

The cases applying Poteat make clear that its holding is limited to sentencing merger circumstances. See, e.g., Johnson v. State, 5 A.3d 617, 620 n. 13 (Del. 2010) (citing Poteat, 840 A.2d at 603) ("Generally, multiple punishments should not be imposed for two offenses arising out of the same occurrence unless each offense requires proof of a fact which the other does not."); Benson v. State, 2013 WL 4613802, at * 1 (Del. Aug. 28, 2013) (sentencing merger of 3 counts each of first degree robbery and aggravated menacing); Carter v. State, 2006 WL 3053268, at * 1 (Del. Oct. 27, 2006) (convictions for both 3 counts of first degree robbery and aggravated menacing, and separate aggravated menacing sentences vacated); Merillo v. State, 2005 WL 2475725, at * 1 (Del. Aug. 16, 2005) (sentencing merger of first degree robbery and aggravated menacing convictions).

In this respect, the Poteat merger holding is similar in effect to this Court's decisions that drug dealing and aggravated possession convictions for the same contraband merge at time of sentencing. See, e.g., Ayers v. State, 97 A.3d 1037, 1041 (Del. 2014); Rodriguez v. State, 2017 WL 1968283, at * 2 (Del. May 11, 2017); Brooks v. State, 2017 WL 603927, at * 1 (Del. Feb. 14, 2017); Ellerbe v. State, 2017 WL 462144, at * 1-2 (Del. Feb. 2, 2017).

Had Grimes been convicted of both first degree robbery and aggravated menacing at his 2013 trial or 2016 retrial, Poteat would have application at sentencing and require a merger of those two convictions for sentencing purposes. Unlike co-defendant Sells, Grimes was never convicted of aggravated menacing, so the sentencing merger requirement of Poteat has no application to Grimes' first degree robbery conviction.

None of the cases cited by amicus or Grimes present the inconsistent jury verdict scenario wherein a defendant is attempting to use an earlier acquittal on the lesser included aggravated menacing allegation as a double jeopardy sword to prevent a retrial after appellate reversal of Grimes' first degree robbery conviction. The reason no such factually and legally similar decisions are cited is that the argument of amicus and Grimes involves none of the three recognized protections afforded by the double jeopardy clause. See North Carolina v. Pearce, 395 U.S. 711, 717 (1969); State v. Cook, 600 A.2d 352, 354 (Del. 1991).

For example, at page 9 of the January 8, 2018 Opening Brief, amicus cites dicta in Ohio v. Johnson, 467 U.S. 493, 501 (1984) that "the Double Jeopardy Clause prohibits prosecution of a defendant for a greater offense when he has already been tried and acquitted or convicted on the lesser included offense." The reason this is dicta is that the majority in Ohio v. Johnson found no double jeopardy violation is that case and because Grimes' prosecution involves the additional

elements that the 2013 jury convicted Grimes of first degree robbery for his role as the getaway driver.

The majority in Ohio v. Johnson, 467 U.S. 493, 501-02 (1984) held that neither double jeopardy protection against multiple punishments for the same offense nor the prohibition against multiple prosecutions applied to prevent the state from continuing to prosecute the defendant for two remaining charges of murder and aggravated robbery after the defendant pled to other charges of voluntary manslaughter and grand theft when all four charges related to the killing of Thomas Hill and the theft of property from Hill's apartment. By choosing to plead guilty over the State's objection to two of the four pending charges, Johnson could not prevent the State from continuing prosecution for the two remaining allegations. Although there was only one homicide victim in Ohio v. Johnson, the defendant could not use double jeopardy as a sword to attempt to short circuit the State from completing the prosecution of all four of the original charges.

Grimes is attempting a similar maneuver by asserting a double jeopardy violation as the defendant in Ohio v. Johnson unsuccessfully argued. The two dissenters in Ohio v. Johnson, 467 U.S. at 503, would prohibit the State from continuing the murder prosecution because voluntary manslaughter is a lesser included offense of murder. While the two dissenters in Johnson might find some

merit in Grimes' double jeopardy as a sword argument, that is not the holding of the majority of the United States Supreme Court in Ohio v. Johnson.

The majority in Ohio v. Johnson, 467 U.S. 493, 501 (1984) did distinguish Kenneth Johnson's case from Brown v. Ohio, 432 U.S. 161, 169 (1977), where Nathaniel Brown stole a car and drove it for nine days. Defendant Brown was initially charged with joyriding (operating an automobile without the owner's consent). Brown pled guilty to joyriding and was sentenced to 30 days in jail and a $100 fine. Brown, 432 U.S. at 162.

After his release, Nathaniel Brown was later charged with theft of the car in which he had been joyriding. In this earlier case the U.S. Supreme Court did find that the Double Jeopardy Clause prevented the subsequent auto theft prosecution because joyriding "was a lesser included offense of auto theft." Brown, 432 U.S. at 167. The Court explained, "Joyriding consists of taking or operating a vehicle without the owner's consent, and auto theft consists of Joyriding with the intent permanently to deprive the owner of possession . . . . Joyriding is the lesser included offense." Brown, 432 U.S. at 167. In finding a constitutional violation, the U.S. Supreme Court in Brown v. Ohio, 432 U.S. at 166 noted, ". . . the Double Jeopardy Clause prohibits successive prosecutions as well as cumulative punishment." Brown v. Ohio is also of no assistance to Grimes because he, unlike

Nathaniel Brown, was found not guilty of aggravated menacing in the initial 2013 trial.

Neither Ohio v. Johnson (1984) nor Brown v. Ohio (1977) involve Grimes' factual and legal circumstance where Grimes was convicted of first degree robbery and acquitted of aggravated menacing in the first 2013 trial. None of the other cases cited by amicus or Grimes present the factual and legal circumstance posed by Grimes' case. The reason for such a void is that Grimes' case does not present a double jeopardy violation.

Had Grimes been convicted of both first degree robbery and aggravated menacing in the first trial, double jeopardy would have prevented a separate sentence for each conviction. See Carter v. State, 2006 WL 30533268, at * 1, n. 3 (Del. Oct. 27, 2006). That is not what occurred in Grimes' 2013 initial trial; thus, there is no sentence merger issue as required by Poteat present here.

Grimes was convicted of first degree robbery at the initial 2013 trial. The fact that this first Superior Court jury also acquitted Grimes of all the aggravated menacing allegations appears simply to be an exercise of jury lenity. See Garvey v. State, 873 A.2d 291, 301 (Del. 2005). Jury verdicts need not be logically consistent when any inconsistency can be explained by lenity. Since co-defendant Sells was the only one to enter the bank and threaten the employees at gunpoint, the jury may have concluded that while Grimes participated in the robbery as the getaway driver,

he was not inside the bank menacing anyone. Such a jury result is permissible, but it is not a basis to assert a double jeopardy violation when Grimes is retried for an offense (first degree robbery) for which he was convicted. The only reason there are successive prosecutions here is because the 2013 verdict was reversed on appeal. Nothing in Grimes' case and two trials presents a constitutional double jeopardy violation.

II. THERE IS NO BASIS TO VACATE THE COMPANION FIREARM POSSESSION CONVICTION

QUESTION PRESENTED

Is there a basis to vacate the companion conviction for possession of a firearm during the commission of a felony if the felony conviction for first degree robbery is upheld?

STANDARD AND SCOPE OF REVIEW

Questions of law are subject to de novo appellate review. See Burrell v. State, 953 A.2d 957, 960 (Del. 2008); Brown v. State, 897 A.2d 748, 750 (Del. 2006).

MERITS OF ARGUMENT

Amicus argues at page 10 of the January 8, 2018 Opening Brief that if the first degree robbery conviction is unconstitutional, the companion charge of possession of a firearm during the commission of the robbery felony must be vacated. The converse is also true. Since Grimes' 2016 reconviction for first degree robbery did not violate the constitutional double jeopardy protection, there is no legal basis to vacate Grimes' separate conviction for possession of a firearm during the robbery felony.

Separate sentences for robbery and a companion deadly weapon possession conviction are normally permissible. See LeCompte v. State, 516 A.2d 898, 901

(Del. 1986); State v. Cook, 600 A.2d 352, 355 (Del. 1991).

CONCLUSION

The judgment of the Superior Court should be affirmed.

John Williams (#365)
JohnR.Williams@state.de.us
Deputies Attorney General
Delaware Department of Justice
102 West Water Street
Dover, Delaware 19904-6750
(302) 739-4211, ext. 3285

Dated: February 7, 2018

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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Appellant,	)	
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below-	)	
Appellee.	)	

AFFIDAVIT OF SERVICE

BE IT REMEMBERED that on this 7th day of February 2018, personally appeared before me, a Notary Public, in and for the County and State aforesaid, Mary T. Corkell, known to me personally to be such, who after being duly sworn did depose and state:

(1) That she is employed as a legal secretary in the Department of Justice, 102 West Water Street, Dover, Delaware.

(2) That on February 7, 2018, she did serve electronically the attached State's Answering Brief Responding to Amicus Curiae properly addressed to:

Craig A. Karsnitz, Esquire
Young, Conaway, Stargatt & Taylor, LLP
110 West Pine Street
Georgetown, DE 19947

(2) That on February 7, 2018, she did deposit in the State Mail two copies of the attached State's Answering Brief Responding to Amicus Curiae properly

addressed to:

Russell M. Grimes, SBI #227158
Howard R. Young Correctional
P. O. Box 9561
Wilmington, DE 19809 SLC N448

Mary T. Corkell

Mary T. Corkell

SWORN TO and subscribed
Before me the day aforesaid.

Notary Public

DENISE L. WEEKS-TAPPAN
Attorney At Law With
Power To Act As Notary Public
Per 29 Del. C§4323(a)(3)

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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Defendant Below-	)	**No. 73, 2017**
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v.	)	
	)	
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 Roman 14-point typeface using Micrsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 4327 words, which were counted by Microsoft Word 2016.

John Williams (#365)
JohnR.Williams@state.de.us
Deputies Attorney General
Delaware Department of Justice
102 West Water Street
Dover, Delaware 19904-6750
(302) 739-4211, ext. 3285

Dated: February 7, 2018