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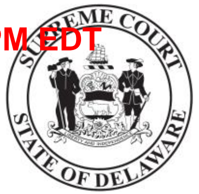

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MAURICE COOPER,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	No. 261, 2019
v.	)	ON APPEAL FROM THE
	)	SUPERIOR COURT OF THE
STATE OF DELAWARE,	)	STATE OF DELAWARE
	)	ID No. 1801007017
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE

APPELLANT'S AMENDED OPENING BRIEF

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Dated: October 23, 2019

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NATURE OF PROCEEDINGS

On February 28, 2019, defendant was found guilty by a jury of multiple felony counts of illegal possession of gun and drug charges.

On May 31, 2019, the defendant was sentenced to a series of consecutive sentences totaling a minimum of 75 years of incarceration at supervision level 5. It is this Order of Judgment and sentence which Mr. Cooper appeals.

Defendant filed a Motion to Suppress evidence found at two locations pursuant to two search warrants. Defendant also filed a Motion to Suppress evidence resulting from two searches of his Instagram Account. Defendant's Motions to Suppress were denied by the Superior Court. It is those denials and the Court's excessive sentence which are the subject of this appeal.

Attached as Exhibits A, B and C are the Sentence Order and partial transcripts of the sentencing and suppression hearings setting forth the Superior Court's rationale for the sentencing and the denial of the motions to suppress.

This is Mr. Cooper's Opening Brief.

SUMMARY OF ARGUMENT

1. The trial court erred when it denied defendant's motion to suppress the evidence found at 3607 Downing Drive, Unit 8, Wilmington, Delaware because the application for the warrant did not contain sufficient facts to connect the property with the contraband sought.

2. The trial court erred when it denied defendant's motion to suppress the evidence found at 2338 W. 18th Street, Apartment 1, Wilmington, Delaware because the application for the warrant did not contain sufficient facts to connect the property with the contraband sought.

3. The trial court erred when it denied defendant's motion to suppress the evidence resulting from the two search warrants for the defendant's Instagram account because the Affidavit of Probable Cause included information gained from the unconstitutional searches of Unit 8 and 18th Street.

4. The Court's sentence of 75 years of incarceration is excessive and violates the defendant's constitutional protection against cruel and unusual punishment.

STATEMENT OF FACTS

1. On January 12, 2018 Wilmington Police sought and received search warrants for two properties believed to contain evidence of drug dealing and illegal possession of firearms. A-50 to A-69.

2. On January 15, 2018 police executed the search warrants whereupon they seized evidence and arrested defendant Mr. Cooper.

3. On January 30, 2018, Mr. Cooper was arraigned on charges related to unlawful drug dealing and unlawful possession of firearms. A-3.

4. On June 4, 2018, Mr. Cooper was re-indicted on the original charges and charged with 39 other defendants on new conspiracy and racketeering charges. A-5.

5. On July 6, 2018, police sought and received a search warrant for defendant's Instagram account. A-70.

6. On August 10, 2018, Attorney James Brose was appointed to replace prior counsel. A-7.

7. On September 28, 2018 Mr. Cooper filed a Motion to Sever and for Bill of Particulars. A-7.

8. On October 8, 2018 the State filed a new superseding indictment which contained the same charges against Mr. Cooper as the June 4, 2018 reindictment. A-7.

9. On October 23, 2018, the police sought and received a second warrant for defendant's Instagram account which covered a different period of time. A-78.

10. On December 17, 2018, the Superior Court denied the Motion to Sever and ordered the state to file a Bill of Particulars as to one count (Money Laundering) only. A-9.

11. On January 15, 2019 Mr. Cooper filed a Motion to Suppress the evidence found as a result of the two search warrants. Defendant claimed each warrant lacked a sufficient basis to support a finding of probable cause. Defendant also filed a Motion to Compel disclosure of the identity of a confidential informant who was expected to testify at trial. A-10.

12. On January 25, 2019, Mr. Cooper filed a second Motion to Suppress Evidence to suppress evidence resulting from a warrant for his Instagram account. A-11.

13. On February 11, 2019, the Superior Court denied the Motion to Suppress the evidence retrieved from the two properties and the Motion to Suppress the evidence found on defendant's Instagram account. A-11.

14. On February 12, 2019, the State agreed to Nolle Pros Counts 86 through 89 of the Superseding Indictment. A-12.

15. On February 22, 2019, defendant filed a letter Motion to Compel the disclosure of the identity of a confidential informant, and a Motion to Continue

Trial so that he could gather additional information related to a defense of entrapment. A-14.

16. On February 25, 2019, the Superior Court denied Mr. Cooper's Motion to Continue the Trial and postponed a decision on whether to compel the State to reveal the identity of the confidential informant. A-86.

17. On February 28, 2019, after a three-day trial, Mr. Cooper was found guilty by a jury of four counts of Possession of a Firearm During Commission of a Felony, four counts of Possession of a Deadly Weapon by Person Prohibited, two counts of Unlawful Possession of Ammunition, one count of Aggravated Possession of Heroin Tier 5, and one count of Drug Dealing – PWID of Heroin Tier 4. A-15.

18. On May 31, 2019, the Superior Court sentenced Mr. Cooper to a series of consecutive sentences totaling a minimum of 75 years of incarceration at supervision level 5. Exhibit "A".

19. On June 18, 2019 Mr. Cooper filed a timely Notice of Appeal. A-87.

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS THE EVIDENCE FOUND AT 3607 DOWNING DRIVE, UNIT 8 BECAUSE THE FACTS SET FORTH IN THE APPLICATION FOR THE SEARCH WARRANT DID NOT ESTABLISH A SUFFICIENT NEXUS BETWEEN THE CONTRABAND SOUGHT AND THE LOCATION SEARCHED.

A. QUESTION PRESENTED.

1. Did the application for the search warrant for 3607 Downing Drive, Unit 8, set forth facts sufficient to enable the issuing magistrate to reasonably conclude that contraband would be found at that location? This issue was preserved by Mr. Cooper's Motion to Suppress filed on January 15, 2019. A-10.

B. SCOPE OF REVIEW.

The standard of review for the Superior Court's denial of a motion to suppress evidence is abuse of discretion. Rambo v. State, 939 A.2d 1275, 1278 (Del. 2007), Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008).

However, where the facts are not in dispute and only a constitutional claim of probable cause is at issue, review of the Superior Court's ruling is *de novo.* Valentine v. State, 207 A.3d 566 (Del. 2019), Smith v. State, 887 A.2d 470 (Del. 2005); State v. Holden 60 A.3d 1110 (Del. 2013), LeGrande v. State, 947 A.2d 1103, 1107 (Del. 2008).

C. MERITS OF THE ARGUMENT.

The application for the warrant to search 3607 Downing Drive, Unit 8, did not set forth sufficient facts for the issuing magistrate to reasonably conclude that contraband would be found at that location. The location of the contraband was not described with requisite particularity and the vague description was not cured by the additional facts submitted to support the cause to search the property.

The Fourth Amendment to the United States Constitution and Article I, Section 6 of the Delaware Constitution provide that warrants must be supported by a showing of probable cause. For a search warrant to issue, there must be more than just probable cause that a crime has been committed; there must also be, "within the four corners of the affidavit, ... facts adequate for a judicial officer to form a reasonable belief that ... the property to be seized will be found in a particular place." Buckham v. State, 185 A.3d 1 (Del. 2018) (quoting Sisson v. State, 903 A.2d 288 (Del. 2006)).

An affidavit submitted in support of a search warrant application must set forth facts that, within the affidavit's four corners, are sufficient for a neutral magistrate to conclude that "a crime has been committed and that the property sought to be seized would be found in a particular place." Rivera v. State, 7 A.3d 961 (Del. 2010), State v. Holden, 60 A.3d 1110, 1114 (Del. 2013) (citing Illinois v. Gates, 462 U.S. 213, 237 (1983)).

Whether the warrant is for a residence or a business there must be specific facts in the affidavit that would lead one to normally expect to find the contraband at the location sought to be searched. Hooks v. State, 416 A.2d 189, 203 (Del. 1980).

Unlike an arrest warrant, a search warrant is not directed at a person, but rather at the particular place where police have probable cause to believe that evidence is located. State v. Jones, 2000 WL 33114361 (Del. Super. Dec. 5, 2000).

In order to establish probable cause for a search warrant the affidavit must set forth facts that "would permit an impartial judicial officer to *reasonably* conclude that the items sought would be found in those locations. In determining whether probable cause has been demonstrated, there must be a *logical* nexus between the items sought and the place to be searched." Dorsey v. State, 761 A.2d 807, 811 (Del. 2000).

In Delaware, the procedure for making a showing to a judicial officer of probable cause sufficient to justify a search warrant is set forth in Chapter 23 of Title 11 of the Delaware Code. Section 2306 of Title 11 describes the necessary elements of a search warrant application:

> The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as

> particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.

Delaware courts have interpreted Sections 2306 as imposing a four corners test for probable cause. The facts alleged in the affidavit must suffice to allow the issuing magistrate to independently evaluate the existence of probable cause. Jensen v. State, 482 A.2d 105, 111 (Del. 1984).

1. Warrant For 3607 Downing Drive, Unit 8, Wilmington, Delaware

In the instant case, search warrants for two properties in the City of Wilmington: 3607 Downing Drive, Unit 8 (hereinafter "Unit 8"), and 2338 W. 18th Street, Apartment 1 (hereinafter "18th St."), were issued by the Honorable Judge Diane Clarke Streett of the Superior Court of Delaware on January 12, 2018 based on applications submitted by Detective Barnes of the Wilmington Police Department. The applications for the two warrants were identical except for the different properties sought to be searched.

The search warrant for Unit 8 was issued based on the belief that there was probable cause to find heroin, firearms, and other evidence related to the distribution of heroin at that location. The affidavit of probable cause (hereinafter "Affidavit") contained 31 paragraphs which can be summarized as follows:

a. Paragraphs 1-10 are boilerplate allegations about how drug traffickers normally operate and a recitation of the affiant's experience and expertise investigating drug traffickers. A-53.

b. Paragraphs 11-20 relate to investigative information, largely through informants, that Mr. Cooper has been involved in criminal activity around Wilmington from 2014 until August, 2017. A-54, A-55.

c. Paragraphs 21-24 seek to connect Mr. Cooper to the address of 2338 W. 18th Street in Wilmington during the summer, fall and winter of 2017. A-54

d. Paragraphs 25-26 detail a buy of heroin and a firearm from Mr. Cooper set up by the police using an informant. A-54.

e. Paragraph 27 relates to the general dangers of fentanyl. A-54.

f. Paragraphs 28-29 state in the first week of January 2017, Mr. Cooper, who is prohibited from possessing a firearm, was looking at gun cleaning equipment in a store and then bought something unidentified before leaving. A-57.

g. Paragraph 30 states that during the second week of January a proven reliable informant had observed Mr. Cooper driving "around the Riverside area with a "tech9" style gun with an extended magazine on his lap". A-57

h. Paragraph 31 states: "This affidavit only includes the facts and circumstances establishing probable cause to substantiate the listed criminal offenses." (Emphasis added). A58.

While the Affidavit may have established probable cause to arrest Mr. Cooper, it failed to provide probable cause to search Unit 8 for contraband. Importantly, the application does not comport with the requirements of Section 2306, which requires the applicant to allege the cause for the search and to recite the facts upon which suspicion is founded to search the subject property. Here,

there is no statement as to why contraband is suspected to exist at Downing Drive, and the Magistrate was left to infer the connection. In fact, Paragraph 31 states the "affidavit only includes facts and circumstances establishing probable cause to substantiate the listed criminal offenses" (emphasis added). This is language used to connect the facts in the affidavit to an arrest warrant, not a search warrant.

To comply with Section 2306, the application in this case should have recited the specific facts that created the suspicion that contraband would be found at Unit 8. Instead the Magistrate was left to infer from the other facts alleged that the police believed guns and drugs would be found there and the amount of inferences are too great to make a logical connection between contraband sought and the property.

Description of the Location of Contraband Too Vague.

The description of the location of the suspected contraband is provided in just one paragraph of the Affidavit. Paragraph 18 states:

> "Your affiant can truly state that during the month of December SA Haney with the FBI Task Force was contacted by a proven and reliable confidential informant, herein CS5, who advised that s/he is familiar with a subject identified as Maurice "Coop" Cooper. CS5 advised that he/she can purchase heroin and/or weapons from Cooper. Furthermore, that Cooper has shown CS5 a large cache of weapons on multiple occasions that included a rifle, tec9, and handguns. CS5 advised that s/he had observed Coop with weapons inside what appeared to be a residence and also inside what appeared to be a car detailing shop. CS5 advised the shop was somewhere along Governor Printz Boulevard. SA Haney and your affiant have viewed weapons from the cache as some were photos sent from one of Maurice Cooper's social media accounts." (emphasis added). A-55.

This description which ties weapons to an apparent residence and an apparent car detailing shop somewhere along Governor Printz is far too vague to connect the weapons to Unit 8. There is no address provided, no crossroad set forth, no description of the surrounding area, no description of the type of building, no name of a mall or complex, no store sign, no landmark, or anything useful to identify where the weapons were seen other than the apparent car detailing shop was "along Governor Printz Boulevard". The informant was not even sure s/he saw the guns in a car detailing shop because s/he said it "appeared to be a car detailing shop." It is even unclear from the Affidavit whether the residence and the apparent detailing shop are the same place since it reads, "informant had observed Coop with weapons inside what appeared to be a residence and also inside what appeared to be a car detailing shop" which could be interpreted as being a single location.

Unit 8 is described later as part of an industrial complex so if the Magistrate determined the description of the location of the contraband was of a single place Unit 8 would clearly not support cause for a warrant because it is not a residence. If the Magistrate determined the informant saw the weapons in two places, then Unit 8 would need to fit the description as the apparent car detailing shop. In other words, the Affidavit would need to present facts sufficient to connect Unit 8 to the apparent car detailing shop where the informant saw the weapons.

Again, Unit 8 is not described as a car detailing shop anywhere in the application, and the top page of the warrant itself describes the location to be searched as "A one story corner unit along an industrial building with a separate front door marked 8". There is no description of a sign on the door of Unit 8 that reads "car detailing", no description of a car detailing business listing on the internet for that location, no description of anything visible through the window that would connect the unit to a car detailing shop, and perhaps most importantly, there is no description of the informant being shown the location and corroborating it was the same place as where s/he saw the weapons.

The only thing that connects Unit 8 to the informant's description is that it is along Governor Printz Boulevard. Clearly, that fact by itself would not be sufficient for the issuance of a search warrant for Unit 8 because it lacks the particularity that is essential for the issuance of a search warrant.

The Delaware Supreme Court recently decided that an application for a warrant to search a cell phone was too vague and general to permit a legal nexus for a search where the state sought to search the phone based on a claim that "criminals often communicate through the use of cell phones." Buckham v. State, 185 A.3d 1 (Del. 2018). Defendant urges this Court to follow the same reasoning. The informant's description of seeing guns in what "appeared to be a car detailing

shop somewhere along Governor Printz Boulevard" did not provide a reasonable belief that guns would be found inside Unit 8.

Not only is the description of the location of the weapons by the informant too vague to support a warrant for Unit 8, but the information lacks a time frame for when the weapons were seen. It states that Mr. Cooper had shown informant a "cache of guns on multiple occasions." However, there is no statement as to when the informant was shown these guns. It could have been months, or even years earlier. An affidavit of probable cause must be based on current, not stale information. Jensen v. State, 482 A.2d 105 (Del. 1984).

As stated by the Delaware Supreme Court in Pierson v. State, 338 A.2d 571, 573 (Del. 1975),

> So essential is it [reference to time] that the basic (and, so far as we know, unanimous) rule is that failure to state when the alleged facts occurred is fatally defective. This is so because 'The prime element in the concept or [sic] probable cause is the time of the occurrence of the facts relied upon.' Fowler v. State, 121 Ga. App. 22, 172 S.E.2d 447 (1970). That concept is not artificial: probable cause must exist to believe that specified items are Presently on the premises, and clearly that probability is lessened by the passage of time. As Chief Justice Hughes said over forty years ago: '. . . it is manifest that the proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause at that time.' Sgro v. United States, 287 U.S. 206, 210, 53 S.Ct. 138, 140, 77 L.Ed.2d 260 (1932).

Paragraph 18 indicates the informant contacted the police in December, 2017, and the informant related s/he can purchase guns or heroin from Mr. Cooper,

but there are no statements in the application as to when the informant was shown weapons by Mr. Cooper. So, while this paragraph may have supported cause to arrest Mr. Cooper for possession of contraband, the lack of a specific time reported for when the weapons were seen by the informant should have rendered the search warrant fatally deficient absent additional information. A-55.

The information about the location of the contraband was too vague to provide probable cause to search Unit 8 even if the source of the information was deemed completely reliable. However, based on the Delaware Supreme Court's recent decision in Valentine v. State, 207 A.3d 566 (Del. 2019), the information provided by the informant cannot even be considered reliable.

In Valentine, the Court held that the affiant's statement that the informant was "past proven and reliable" did not provide enough information for the Magistrate to make an independent determination about the informant's reliability. Because the application did not include information about the manner in which the informant had proved reliable in the past, the Court found that the reliability of the informant had not been proved and required more than the affiant's statement to find probable cause.

Like in Valentine, the informant here (CS5) was described as a "past proven and reliable confidential informant", but the application said nothing about the manner in which CS5 had proved to be reliable in the past. Accordingly, the

statement that CS5 was past, proven reliable should have been of no value in judging the reliability of the information provided.

It should also be noted that much of the information in the Affidavit related to Mr. Cooper's prior, suspected criminal activity was provided by informants whose reliability was not supported by additional information.

Reliability can be shown in other ways besides identifying past, proven performances. Here, presumably to bolster CS5's reliability, Paragraph 18 also states that officers have "viewed weapons from the cache as some were photos sent from one of Maurice Cooper's social media accounts". This indicates investigating officers saw photos of weapons sent from Mr. Cooper's social media account, but there is no basis given for how the officers knew the weapons were the same cache that the informant had seen. Nor is there is a description of when the photos were taken, when they were sent, when they were seen by the officers, or even whether they were guns claimed to be owned by Mr. Cooper or just random gun photos from the internet. Accordingly, this information has little value in bolstering the reliability of the informant and even less value in identifying Unit 8 as the place to search for the weapons seen by the informant.

The fact the informant told police s/he could buy guns and heroin from Mr. Cooper and then did so lends credibility to his/her statement that Mr. Cooper had shown him/her a cache of weapons, but the almost complete lack of description

about where and when s/he saw the weapons detracts from credibility. In Valentine, the informant gave a specific address where the contraband existed, and the Court still found probable cause lacking.

Again, given the vague description of the location of the weapons, the extent of the informant's reliability in this case should not really be an issue, but to the extent the reliability of CS5 is evaluated, the information provided in the Affidavit does not meet the standard of reliability set forth in Valentine.

Additional Information Did Not Corroborate Unit 8 was the Apparent Car Detailing Shop.

There is only one other paragraph in the Affidavit which can be considered to connect Unit 8 with the apparent car detailing shop where the informant saw the weapons. Paragraph 26 reads:

> Your affiant can truly state that during the first week of January, 2018 your affiant along with assisting members of the FBI Task force and Wilmington Police Department set up covert surveillance at 2338 W. 18th Street, Apartment 1, Wilmington, DE for the purpose of surveilling Mr. Cooper. This location is in the county of New Castle, state of Delaware. Surveillance was established at 1020 hours and Cooper's vehicle Nissan Maxima bearing DE REG 246528, was parked in front of the residence. At approximately 1040 hours Cooper was observed exiting the residence carrying a white in color shopping bag, and entering the driver's side of the vehicle. He pulled away. A short time later Cooper was observed at 3607 Downing Drive which is a small industrial complex along Governor Printz Boulevard that has a car detailing shop inside. This location is in the county of New Castle and state of Delaware. The complex consists of eight (8) single story units, all attached, with store front doors along the front of the building. Cooper was parked in front of Unit 8, the corner unit, and was standing outside the building. At this same time Cooper was observed using his cell phone wherein he simultaneously was in contact with CS5 confirming the

> aforementioned transaction. Following the call, Cooper entered Unit 8 for a brief period of time then exited and entered his vehicle. Nothing was observed in his hands but he was wearing a large puffy jacket. Cooper then entered his Nissan Maxima and was covertly followed as he left the complex and responded directly to the predetermined meet location, which is in the county of New Castle, state of Delaware. CS5 was first searched for any contraband and/or USC and same was met with negative results. CS5 was supplied with an amount of law enforcement supplied funds and directed to respond to the meet location. CS5 was kept under constant surveillance. Cooper arrived at the meet location and contacted CS5 wherein Cooper supplied CS5 with and amount of heroin and a firearm. CS5 provided Cooper with the USC. The transaction concluded and CS5 responded directly back to a predetermined meet location where s/he turned over the amount of heroin and firearm to SA Haney. CS5 was rechecked for any contraband and USC and same was met with negative results. Cooper was followed out of the area. The heroin was tagged as evidence.

A-57.

To begin with, the application does not directly describe why the affiant believes contraband will be found in Unit 8 of 3607 Downing Drive, which is required under Section 2306. The Affidavit does not say for example that the affiant believes Unit 8 is the location of the weapons because it is an apparent car detailing shop along Governor Printz Boulevard or because Mr. Cooper went into it on his way to the controlled buy. The Magistrate is left to infer the connection, but such an inference is illogical for the following reasons.

First, while the Affidavit states 3607 Downing Drive is a small 8-unit industrial complex "along Governor Printz Boulevard that has a car detailing shop inside", there is no statement that Unit 8, the unit Mr. Cooper went into, was a car detailing shop. The unit he entered could have been any kind of store, office, or

storage place. Thus, according to the Affidavit, there was a one in eight chance (12.5%) the unit Mr. Cooper went into was a car detailing shop. Without specifically describing Unit 8 as containing a car detailing shop, the fact that Mr. Cooper went into it offers little connection to the place where the informant saw the weapons. Furthermore, the informant never mentioned the apparent car detailing shop was inside a building with seven other units, or in a building without a sign, or anything else that might connect Unit 8 of 3607 Downing Drive to the place he saw the weapons, except that it was along Governor Printz Boulevard. It is not even clear the place the informant saw the weapons was a car detailing shop.

Second, the affiant does not state how many other car detailing shops there are along Governor Printz Boulevard, or that this complex contained the only car detailing shop along Governor Printz Boulevard. So, even if the Magistrate believed the informant saw the weapons in a car detailing shop, there was no way to assess the likelihood of this location being the same one s/he saw the weapons in.

Third, and perhaps most importantly, the fact that the industrial complex contained a car detailing shop was based entirely on the conclusory statement of the affiant. Despite the critical importance of this fact, there is nothing in the warrant application which identifies the source of this description and there is no indication why the affiant believes the complex has a car detailing shop inside.

Unlike the fact that the property is along Governor Printz Boulevard which could be easily confirmed, the fact that the property had a car detailing shop inside should have been supported by additional information to enable the Magistrate to make an independent judgement about its existence.

In Valentine, the Court underscored the importance of the Magistrate making an independent judgment about essential facts when it held that merely alleging an informant was past, proven reliable did not provide enough information to enable the Magistrate to make an independent determination about the reliability of the informant. As the Court stated,

> Police officers frequently attempt to demonstrate the credibility of an undisclosed informant by pointing to his past performance. Here, the State contends that the detectives sufficiently checked that box by referring to "the informant as a 'past proven reliable confidential informant.' But such a conclusory allegation regarding the informant's past performance is problematic because it interferes with the issuing magistrate's ability to make an independent determination regarding the informant's reliability.

Valentine, 207 A.3d at 572 (citation omitted).

As stated by the United States Supreme Court, "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." Illinois v. Gates, 462 U.S. 213, 238 (1983).

The fact that the industrial complex contained a car detailing shop inside was critical to connecting this location to the place where the informant saw the

weapons. By not providing additional information to support the conclusion that the complex contained a car detailing shop inside, the affiant usurped the Magistrate's role as an independent fact-finder. The Magistrate was not given enough information to independently evaluate the likelihood that the contraband the informant saw would be found in the industrial complex, let alone Unit 8.

The Magistrate should have required more than the affiant's conclusory statement. How did the affiant know there was a car detailing shop inside the building? No photos of the complex/unit were attached as an exhibit to the warrant application and there was not a description of a single thing that could corroborate the complex had a car detailing shop inside such as a statement that "Unit 8 has a sign on the door that says 'Joe's car detailing'" or "an internet search of the address revealed a business listing for a car detailing shop". At the very least, the Magistrate should have required the affiant to provide a source for the knowledge that there was a car detailing shop inside the complex.

Fourth, the fact that Mr. Cooper parked in front of Unit 8, confirmed the controlled buy on his cellphone while standing outside the building, and briefly entered Unit 8 before getting back into his car and driving to the meet location does not create probable cause to believe Unit 8 contained contraband.

Mr. Cooper was described as carrying a white bag when he left the 18th Street property, but he was not seen carrying anything, including the white bag,

when he went into or out of Unit 8. He was also described as going into the unit briefly. Other than being seen there that day, there is nothing in the application which connects Mr. Cooper to the property. There is no allegation that Mr. Cooper was on the lease for Unit 8, or that he had any other possessory interest in the property. There is no statement that he was seen going into and out of the property at any time prior to the morning of the controlled buy. There is no statement that he had to use a key to enter the unit. There is no description of any criminal or suspicious activity being observed at 3607 Downing Drive before or after Mr. Cooper went into Unit 8. If probable cause to arrest does not give cause to search the arrestee's home, it certainly does not give cause to search a property he is seen going into briefly, which he has no known connection to, and which he is not seen doing anything suspicious while entering or exiting. United States v. Jones, 994 F.2d 1051, 1055-56 (3d. Cir. 1993).

Mr. Cooper's actions: talking on the phone outside Unit 8, going in and out of the unit briefly before leaving in his car, and not having anything in his hands when he came out of the unit, are just as consistent with innocent actions as the inference that he went in the unit to get a gun or drugs.

Totality of Circumstances Do Not Support Probable Cause.

"Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause, and we have thus concluded that the

preference for warrants is most appropriately effectuated by according "great deference" to a magistrate's determination." Spinelli v. United States, 393 U.S. 410, 419, (1969).

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for . . . conclud[ing]" that probable cause existed.

Illinois v. Gates, 462 U.S. at 238 (citing Jones v. United States, 362 U.S. 257 (1960).

Deference to the magistrate, however, is not boundless. The magistrate must "perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police." Aguilar v. Texas, 378 U.S. 108 (1964). A magistrate failing to "manifest that neutrality and detachment demanded of a judicial officer when presented with a warrant application" and who acts instead as "an adjunct law enforcement officer" cannot provide valid authorization for an otherwise unconstitutional search. Lo-Ji Sales, Inc. v. New York, 442 U.S. 319, 326-327 (1979).

Also, reviewing courts will not defer to a warrant based on an affidavit that does not "provide the magistrate with a substantial basis for determining the existence of probable cause." Even if the warrant application was supported by

more than a "bare bones" affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances. Illinois v. Gates, 462 U.S. at 238-239, United States v. Leon, 468 U.S. 897 (1984).

In the instant case, the facts presented to the Magistrate which possibly connected contraband with Unit 8 were as follows:

1. An informant, whose credibility was not shown, indicated s/he has seen Mr. Cooper in possession of weapons on multiple occasions, but no time frame is provided.

2. The informant described that s/he saw the guns in what appeared to be a residence and what appeared to be a car detailing shop along Governor Printz Boulevard.

3. Mr. Cooper stopped at 3607 Downing Drive and briefly went into Unit 8 on the morning he engaged in a controlled buy of heroin and a gun. Nothing was seen in his hands going into or out of Unit 8.

4. Unit 8 is part of an 8-unit industrial complex along Governor Printz Boulevard that contains a car detailing shop inside.

Mr. Cooper contends these facts, and the reasonable inferences related thereto, did not establish probable cause to search Unit 8 for the following reasons.

1. There is no time frame for when the informant saw the weapons, so this information is stale or at least lacking adequate specificity.

2. The description of the location of the contraband was too vague to connect it to the subject property.

3. The description of the industrial complex containing a car detailing shop was based on a conclusory statement by the affiant which was provided without foundation or corroborative support. The Magistrate did not make an independent determination about this essential fact.

4. Unit 8 is not described in the Affidavit as containing a car detailing shop and no additional facts are provided to suggest it contained a car detailing shop. It was merely one of eight units in a complex that contained a car detailing shop.

In Valentine, 207 A.3d at 577 the Delaware Supreme Court stated,

> Although we review a magistrate's probable cause determination with great deference, we must nevertheless test the reasonableness of the magistrate's conclusion that the items sought—here, a handgun and ammunition—would be found in the places to be searched. Where the police are acting on the basis of an unidentified informant's tip whose past performance as an informant and basis of knowledge of the subject matter of the current tip are not set forth in the affidavit and where the tip is devoid of detail and not corroborated in any meaningful way, a conclusion that there was probable cause for a search warrant is not reasonable.

Mr. Cooper contends the totality of circumstances surrounding the issuance of the warrant for Unit 8 militate the same finding as in Valentine. While the instant case is different from Valentine because the informant's basis of knowledge for the location of the weapons (first-hand observation) is set forth in the Affidavit, the lack of particularity in the description, and in particular the lack of a time frame, nullifies the value of it. Further, the tip is not corroborated in any meaningful way because: 1) the property Mr. Cooper went into along Governor Printz Boulevard is not described as a car detailing shop, 2) there is nothing connecting Mr. Cooper to the building except that he went into it, 3) there is

nothing connecting the property to the location where the weapons were seen except that it is along Governor Printz Boulevard, 4) Mr. Cooper went into the building briefly, and 5) Mr. Cooper is not seen carrying anything into or out of the building. See McKinney v. State, 107 A.3d 1045 (Del. 2014).

While the warrant application contained sufficient information to support cause to arrest Mr. Cooper, the information connecting suspected contraband to Unit 8 of 3607 Downing Drive is fatally deficient based on statutory and case law.

Finally, the only contraband the informant indicated s/he saw Mr. Cooper possess was the firearms. The informant did not mention ever seeing drugs at either the apparent residence or the apparent car detailing shop, so the informant does not provide any basis to believe drugs would be found at Downing Drive, and there is no cause to search Unit 8 for drugs based on the information provided by the informant.

II. THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS THE EVIDENCE FOUND AT 2338 W. 18th STREET, APARTMENT 1, WILMINGTON, DELAWARE BECAUSE THE FACTS SET FORTH IN THE APPLICATION FOR THE SEARCH WARRANT DID NOT ESTABLISH A SUFFICIENT NEXUS BETWEEN THE CONTRABAND SOUGHT AND THE LOCATION SEARCHED.

A. QUESTION PRESENTED.

1. Did the application for the search warrant for 2338 W. 18th Street, Apartment 1, Wilmington, Delaware, set forth facts sufficient to enable the issuing magistrate to reasonably conclude that contraband would be found at that location? This issue was preserved by Mr. Cooper's Motion to Suppress filed on January 15, 2019. A-10.

B. SCOPE OF REVIEW.

The standard of review for the Superior Court's denial of a motion to suppress evidence is abuse of discretion. Rambo v. State, 939 A.2d 1275, 1278 (Del. 2007), Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008).

However, where the facts are not in dispute and only a constitutional claim of probable cause is at issue, review of the Superior Court's ruling is *de novo.* Valentine v. State, 207 A.3d 566 (Del. 2019), Smith v. State, 887 A.2d 470 (Del. 2005); State v. Holden 60 A.3d 1110 (Del. 2013), LeGrande v. State, 947 A.2d 1103, 1107 (Del. 2008).

C. MERITS OF THE ARGUMENT.

The search warrant for 2338 W. 18th Street, Apartment 1, Wilmington, Delaware (hereinafter "18th Street") was identical to the warrant for Unit 8, except for the location to be searched. Unlike the application for Unit 8, the application for 18th Street states facts which connect Mr. Cooper to the property. He has a car registered to the address in October, 2017 (Paragraph 21), and he is apparently residing there in September, 2017 when the property is searched by the Office of Animal Welfare (Paragraph 22). However, like the application for Unit 8, the application for the 18th Street warrant lacks a sufficient nexus to connect the property to the contraband identified by the informant.

Description of Location of Contraband.

In Paragraph 18 the informant indicated he had seen Mr. Cooper in possession of a cache of a weapons in what appeared to be a residence. This statement does not connect the weapons to 18th Street because the "apparent residence" could have been anyone's. S/he does not state the apparent residence belonged to Mr. Cooper, or was connected to him, in any way. Nor, is there any address provided or any description of the property. The description is so broad it is useless for purposes of connecting the suspected contraband to the subject property.

Furthermore, like the warrant application for Unit 8, no time frame was given for when the weapons were seen, the informant did not mention seeing any drugs at the apparent residence (only weapons), and the informant never corroborated the property was the same one s/he saw the weapons in. The description of where the informant saw the weapons is so vague and unspecific that it cannot even be corroborated.

Cause to Arrest Not the Same as Cause to Search.

Based on the controlled buy alone, the Magistrate had cause to issue an arrest warrant for Mr. Cooper. State v. Walker, 444 A.2d 277 (Del. Super. 1982).

However, cause to arrest is not the same as cause to search. In Dorsey v. State, 761 A.2d 807 (Del. 2000), the Delaware Supreme Court adopted the general standard from the Third Circuit Court of Appeals that "probable cause to arrest does not automatically provide probable cause to search the arrestee's home" and "although probable cause to arrest does not automatically provide probable cause to search the defendant's home, the fact that probable cause to arrest has been established increases the probability that the defendant is storing evidence of that crime in the defendant's residence." Id. at 812, 813.

Delaware Courts have consistently held that the determination of a nexus between suspected contraband and the property sought to be searched is based on a

case-by-case analysis of the totality of the facts presented in the warrant application.

In this case, the following information was presented to show the likelihood that contraband would be found at 18th Street.

1) Mr. Cooper was a suspected drug dealer who was rumored to be involved in crimes of violence around Wilmington (Paragraphs 10-17). A-64.

2) Mr. Cooper showed an informant a cache of weapons while inside what appeared to be a residence (Paragraph 18). A-65.

3) Mr. Cooper had a car registered at 18th Street and appeared to reside there (Paragraphs 21, 22). A-66.

4) Mr. Cooper engaged in a controlled buy for the sale of heroin and a firearm (Paragraph 25). A-67.

5) On the morning of the controlled buy, Mr. Cooper was seen leaving 18th Street carrying a white shopping bag. His only stop between 18th Street and the controlled buy location was at 3607 Downing Drive, but he was not seen carrying anything in or out of the building (Paragraph 26). A-67.

6) It is common for drug dealers to secret contraband in secure locations within their residence (Paragraphs 4, 9). A-63.

In State v. Cannon, 2007 WL 1849022 (Del. Super. June 21, 2007) the Delaware Superior Court found that the application for a warrant to search defendant's home based on evidence that defendant committed drug dealing crimes outside the home and the police's expert assertion that drug dealers often keep

contraband hidden in their homes was not enough of a connection to support the search of the home.

The Superior Court stated in Cannon,

> Courts in many jurisdictions, including this one, have addressed what constitutes an adequate nexus where police have evidence of crimes taking place outside a defendant's residence and rely in whole or part upon police expert opinion in attempting to establish probable cause for a residence search. Decisions in this area are necessarily fact-specific. However, while some courts have permitted an officer's statement of belief based on training and experience to establish a sufficient nexus, Delaware courts, consistent with many other jurisdictions, require that the affidavit contain specific factual information adequate to support probable cause to search a residence. Failure to require an adequate fact-based connection between illegal activity and an arrestee's home risks licensing "virtually automatic searches of residences of persons arrested for narcotics offenses.

Id. at 13.

The facts in the subject case are squarely within the holding in Cannon, and the State is required to establish additional facts to connect the property to the items sought beyond the fact that Mr. Cooper engaged in a drug transaction outside the property.

The only other fact tying contraband to 18th Street is that Mr. Cooper was seen carrying a white bag when he left the property on the morning of the controlled buy. Defendant contends this additional fact alone is not enough to support cause to search.

In State v. Ada, 2001 WL 660227 (Del. Super. June 8, 2001), police received a tip that defendant was selling drugs from Apartment C-4 at 3201

Lancaster Ave. (hereinafter "Building 1"). After surveilling the location, police arrested two people who left the Building 1 and found them in possession of cocaine. The arrestees informed the police they bought the drugs from someone in apartment C-4 in Building 1. Police continued to watch defendant and they noticed he travelled to a different building (Building 2) which he would enter with a key. He was seen bringing a gym bag from that Building 2 back to Building 1. A month later police used an informant to buy drugs from someone they suspected would get the drugs from defendant. They arrested the middleman after he left Building 1, and he confirmed the drugs he was arrested with came from the defendant and from C-4 in Building 1. Police submitted this information along with a statement that drug dealers often keep their main supply of drugs separate from where they sell them in their application for a warrant to search Building 2.

The Superior Court granted defendant's motion to suppress in Ada holding that the affidavit of probable cause did not form a sufficient nexus between the items police sought and Building 2 because police had observed no illegal or suspicious activity occurring at the residence. Essentially, the Court found that a known drug dealer carrying a bag from a property did not give cause to search that property, and Mr. Cooper contends the same reasoning should be applied to his case.

In Valentine, the application for the search warrant included the fact that while the defendant was under surveillance he was seen leaving his apartment "and briefly meeting with an unknown black male where a duffle bag was exchanged between the two men." In reversing the Superior Court's decision to deny the defendant's motion to suppress, the Court held:

> The affidavit does not disclose any particularized facts upon which an independent fact-finder could conclude that the men were acting in a suspicious manner, that they were making an effort to conceal their conduct, or even that the duffle bag contained contraband instead of, say, clothing. The affidavit does not even say which of the two men gave or received the bag during the exchange. Moreover, in their affidavit, the detectives do not offer any opinion on *why*, based on their training and experience, the duffle bag exchange was indicative of criminal activity of any sort or *why* the exchange would tend to indicate that police would find illegal weapons and ammunition in Valentine's home or car.

Valentine v. State, 207 A.3d at 20.

Similarly, the affiant in the instant case does not indicate that Mr. Cooper was attempting to conceal his conduct or give a reason why he believes the white bag contains contraband as opposed to something else. Also, the affiant does not state why based on his experience he believed the bag was indicative of criminal activity or why Mr. Cooper's possession of the bag would tend to indicate that police would find contraband in his home.

In the recent case of State v. McCants, 2019 WL 1503937 (Del. Super. Apr. 4, 2019), the Superior Court held that an informant's tip that defendant was selling drugs in the New Castle area was overly broad. In that case, the police started

surveillance of the defendant's home based on a records search which provided his address. They watched him engage in several transactions outside his home which appeared to be drug transactions and they sought and received a warrant to search his home. Relying on Cannon and Valentine, the Superior Court granted the defendant's motion to suppress the search because: 1) the reliability of the informant was not established, 2) the description of where the defendant was selling drugs was too broad to connect it to his home, and 3) evidence that the defendant was dealing drugs outside the home was not enough to corroborate the informant's tip or to establish probable cause to search the home.

Defendant contends the same reasoning should be applied here. There was no information connecting 18th Street to contraband except the information that Mr. Cooper may have been residing there. There was no allegation of any criminal activity observed at 18th Street, including prior drug sales, even though the application indicates the property was under surveillance prior to the morning of the controlled buy. As such, this case is similar to State v. Harding, 2017 WL 1018409 (Del. Super. Mar. 13, 2017), where the Superior Court found the application for the search warrant was insufficient because the property sought to be searched was not connected to criminal activity.

The fact that Mr. Cooper was seen leaving 18th Street on his way to the controlled buy does not corroborate the informant's tip that s/he saw weapons in

what appeared to be a residence any more than the fact that the defendant in McCants was seen engaging in suspected drug transactions after leaving his residence.

Unlike the cases of State v. Lindsey, 2011 WL 2651808 (Del. Super. June 29, 2011) and State v. Aguilar, 2016 WL 4394617 (Del. Super. Aug. 15, 2016), there is no direct travel from the subject property to the buy. There is also no evidence that Mr. Cooper returned to 18th Street after the controlled buy, which was used to help establish probable cause in Cannon and in State v. Morris, 2017 WL 6513487 (Del. Super. Dec. 19, 2017).

In summary, the informant's tip that weapons were in what appeared to be a residence was too broad to connect it to any location, let alone 18th Street, and because the information also lacked a specific time frame it provided no cause to search. However, because Mr. Cooper was seen engaging in a controlled buy after leaving 18th Street, there may have been probable cause to search the property if additional facts were provided to connect the property to suspected contraband, but the only other fact provided was that Mr. Cooper was seen with a white bag in his hand when he left 18th Street on his way to the controlled buy. This additional fact was not enough to support probable cause to search 18th Street because there was no reason to believe the bag contained contraband, no statement that the bag was suspected to contain contraband, and no statement as to why if the bag was

suspected to contain contraband there was a greater likelihood of finding contraband in the property.

ARGUMENT

III. THE TRIAL COURT ERRED WHEN IT DENIED DEFENDANT'S MOTION TO SUPPRESS THE EVIDENCE RETRIEVED FROM THE TWO WARRANTS FOR DEFENDANT'S INSTAGRAM ACCOUNT BECAUSE THE FACTS SET FORTH IN THE APPLICATIONS WERE BASED IN PART ON INFORMATION THAT WAS GAINED AS A RESULT OF THE UNCONSTITUTIONAL SEARCHES OF UNIT 8 AND 18TH STREET.

A. QUESTION PRESENTED.

1. Did the application for the search warrant for 3607 Downing Drive, Unit 8, set forth facts sufficient to enable the issuing magistrate to reasonably conclude that contraband would be found at that location? This issue was preserved by Mr. Cooper's Motion to Suppress filed on January 25, 2019. A-11.

B. SCOPE OF REVIEW.

The standard of review for the Superior Court's denial of a motion to suppress evidence is abuse of discretion. Rambo v. State, 939 A.2d 1275, 1278 (Del. 2007), Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008).

However, where the facts are not in dispute and only a constitutional claim of probable cause is at issue, review of the Superior Court's ruling is *de novo*. Valentine v. State, 207 A.3d 566 (Del. 2019), Smith v. State, 887 A.2d 470 (Del. 2005); State v. Holden, 60 A.3d 1110 (Del. 2013), LeGrande v. State, 947 A.2d 1103, 1107 (Del. 2008).

C. MERITS OF ARGUMENT

On July 6, 2018, Detective Barnes sought and received a warrant for the entire contents of Mr. Cooper's Instagram Account under the name "makeamill_pt2" for the time period between 11/25/17 and 1/15/18. The application for the warrant listed the same facts as the application for the warrants of Unit 8 and 18th Street, except it included the additional fact that guns and drugs were found pursuant to the search of those two properties. A-70.

On October 23, 2018 Detective Barnes sought and received a warrant for the entire contents of Mr. Cooper's Instagram Account under the name "makeamill_pt2" for the time period between 5/18/17 and 1/15/18. The information sought in this warrant essentially overlapped with the Instagram warrant issued July 6, 2018. A-78.

The application for the October 23, 2018 Instagram warrant was essentially the same as the July 6, 2018 Instagram warrant except that it included information related to guns that was found as a result of reviewing information gained from the July 6, 2018 warrant.

If this Honorable Court reverses the Superior Court's decision to deny the Defendant's Motion to Suppress the evidence gained from Unit 8 and/or 18th Street, it should also reverse the Superior Court's decision to deny the defendant's motion to suppress the evidence gained through these two Instagram warrants because

information contained in the applications for the Instagram warrants related to Mr. Cooper's possession of guns and drugs found at the properties will have been gathered unconstitutionally and any information resulting from the warrants will be fruit of the poisonous tree. Jones v. State, 28 A.3d 1046 (Del. 2011), Wong Sun v. United States, 371 U.S. 471 (1963).

Defendant contends that the information in the Instagram warrant applications should be excised from the applications and the matter should be remanded to the Superior Court to determine whether to grant the defendant's motion to suppress based on whether probable cause to issue the warrant existed after the excised facts are removed. Everett v. State, 186 A.3d 1224 (Del. 2018).

ARGUMENT

IV. THE COURT'S SENTENCE IN THIS CASE VIOLATED DEFENDANT'S CONSTITUTIONAL PROTECTION AGAINST CRUEL AND UNUSUAL PUNISHMENT.

A. QUESTION PRESENTED.

1. Did the Court's decision to run the applicable minimum mandatory sentences consecutively resulting in a sentence of 75 years incarceration at Level 5 violate the constitutional prohibition against cruel and unusual punishment? This issue was preserved in counsel's argument at sentencing. A89-A92.

B. SCOPE OF REVIEW.

Appellate review of the sentence of a defendant in a criminal case is for an abuse of discretion. Wehde v. State, 983 A.2d 82 (Del. 2009). Delaware law is well established that appellate review of sentences is extremely limited. Appellate review of a sentence generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature. Bissoon v. State, 100 A.3d 1020 (Table), 2014 WL 4101783 (Del. Aug. 19, 2014).

To qualify as cruel and unusual punishment the case must be the "rare case in which a threshold comparison of the crime committed, and the sentence imposed leads to an inference of gross disproportionality." Crosby v. State, 824 A.2d 894, 907 (Del. 2003).

C. MERITS OF ARGUMENT

Title 11 Section 3901(d) of the Delaware Criminal Code states the Court shall determine whether a sentence shall run concurrently or consecutively to any other sentence, except that "no sentence of confinement...shall be made to run concurrently with any other sentence of confinement imposed" for certain crimes including Title 11 Section 1447A (Possession of a firearm during course of a felony – "PFDCF") and "any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously convicted of a Title 11 violent felony."

Mr. Cooper was convicted of 4 counts of PFDCF. Each count carried a minimum mandatory of 5 years, so pursuant to Section 3901(d), the Court was required to sentence him to 20 years of incarceration consecutive to the underlying offense of drug dealing, which carried a minimum mandatory of 2 years.

Defendant was also sentenced on four counts of Possession of a Firearm by a Person Prohibited ("PFBPP") which requires a minimum mandatory sentence of 10 years for each count. Defendant contended that the sentence for these convictions was not required to be served consecutively to each other, or to the sentence issued for PFDFC because: 1) unlike Section 1447A, there is no specific clause mandating the consecutive sentences for violations of Section 1448 (PFBPP), and 2) possession of firearm by a person prohibited is not among the 19 crimes

specifically listed in 3901(d). Defendant contends this omission indicates the Legislature did not intend for convictions of PFBPP to be stacked where there was no opportunity for rehabilitation between the convictions.

The Superior Court did not address whether convictions for PFBPP could be sentenced concurrently under Section 3901. Instead, he stated, "I am going to sentence you consecutively. So even if I could [make convictions for PFBPP run concurrently], I wouldn't." (Sentencing Transcript, A-94). He then sentenced Mr. Cooper to a cumulative sentence of 75 years of Level 5 incarceration, which is essentially a life sentence.

The Eighth Amendment of the United States Constitution as applied to the States through the 14th Amendment prevents punishments which are cruel and unusual. The Eighth Amendment contains a "narrow proportionality principle" that "applies to noncapital sentences." Crosby v. State, 824 A.2d 894, 904 (Del. 2003).

After careful analysis the Court in Crosby held that defendant's sentence of 45 years of incarceration for a non-violent forgery offense violated the Eighth Amendment because it was grossly disproportional to the crime committed. Mr. Cooper contends that 75 years for his crimes is equally disproportionate.

CONCLUSION

Mr. Cooper respectfully requests this Honorable Court to reverse the decision of the trial court which denied his Motions to Suppress evidence, and further requests a remand of the case for trial subject to the exclusion of evidence related to the Motions to Suppress. In the alternative, defendant requests a remand for re-sentencing that is not violative of cruel and unusual punishment.

Respectfully Submitted,

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