



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MCARTHUR RISPER,)
)
 Defendant – Below,)
 Appellant,)
)
 v.) **No. 56, 2020**
)
 STATE OF DELAWARE,)
)
 Plaintiff – Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On July 2, 2018, a Sussex County Grand Jury returned an indictment against McArthur Risper (“Risper”) alleging Murder First Degree, Conspiracy First Degree, two counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”), Aggravated Menacing, and Possession of a Firearm By a Person Prohibited (“PFBPP”).¹ A001; A014-16. Prior to trial, the State filed a motion *in limine* seeking to admit evidence of Risper’s possession of illegal drugs and a weapon, and his involvement in a home invasion to recover his stolen illegal drugs and gun. A004; A017-32. In a bench ruling, the Superior Court granted the State’s motion and the case proceeded to trial. A008; Ex. A to Op. Brf. On the first day of trial, Risper requested dismissal of his case based on a purported *Brady*² violation. Ex. B to Op. Brf.; A010; A114. The trial judge denied Risper’s motion to dismiss and his alternative request for a continuance. After a six-day trial, a jury convicted Risper of all charges. A011. The Superior Court sentenced Risper to an aggregate life term plus 30 years incarceration. Ex. A to Ans. Brf. Risper has appealed. This is the State’s answering brief.

¹ The PFBPP charge was later severed by the court. A007.

² *Brady v. Maryland*, 463 U.S. 1 (1968).

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court did not abuse its discretion when it permitted the State to introduce evidence under D.R.E. 404(b) to establish Risper's motive for committing the murder. The evidence satisfied the Rule 404(b) criteria for admission and was introduced for a proper purpose.

II. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Risper's request for dismissal and later request for a continuance. The court fashioned an appropriate remedy for the State's untimely disclosure of purported potentially exculpatory information. The defense was able to use the information and present it to the jury. In any event, the evidence of Risper's guilt was overwhelming and Risper has failed to demonstrate prejudice from the State's untimely disclosure.

STATEMENT OF FACTS

On May 11, 2018, Channell Gray (“Gray”) was visiting her cousin’s house in the Coverdale Crossing neighborhood in Bridgeville. B-52. Gray was in front of her cousin’s house and saw her friend, Corey Bailey (“Bailey”). B-53. While talking to Bailey, Gray saw a black Jeep pull up, at which point Bailey said, “m-fers got me.” B-54. Bailey told Gray to get her husband because the men in the Jeep were about to kill him. B54. Gray saw two men emerge from the Jeep and walk toward Bailey. B-55. Although, one of the men was wearing a mask that partially covered his face, Gray recognized him as McArthur Risper. B-56. Risper got out of the Jeep from the front passenger seat, walked toward Bailey, aimed a handgun at him and fired it, fatally wounding Bailey. B-56; B-75. Earlier that day, Gray had seen Risper driving in the neighborhood in a black Jeep. B-56. Gray, who knew Risper because he had dated her cousin, identified Risper from a photo line-up and identified him as the shooter when she testified at trial. B-58; B-237.

Risper’s cousin, Hayward Risper (“Hayward”), who was also in the Coverdale Crossing neighborhood that day, saw Risper in the front passenger seat of the black Jeep prior to the shooting. B-212. At that time, Laval Farmer was driving the Jeep. B-212. At some point in the evening, Hayward heard gunshots and saw Risper driving the Jeep away from the direction of the gunfire. B-214.

Hayward tried to stop the Jeep, calling to Risper, but Risper continued driving. B-215. Later that evening, Hayward later spoke with Risper on the phone, and Risper, who was apparently aware of the shooting, denied any involvement in it. B-216.

Risper's nephew, Guan Davis ("Davis"), also saw Laval Farmer driving Risper in a "black truck" that day. B-253. At some point in the evening he heard what he thought were fireworks and shortly thereafter saw Farmer, who was driving the black truck, get out of the vehicle and run into his house. B-254. An unidentified person got into the driver's seat and drove the truck away. B-254. Five minutes later, Farmer came out of his house after having changed his clothes, got back into the black truck, and drove away. B-254.

Desira Sutton ("Sutton"), Risper's girlfriend, testified that the weekend immediately following the shooting, she met Risper at a hotel in Salisbury, Maryland, and stayed there for the weekend. B-259. Sutton was aware that Risper was wanted for Bailey's murder and believed that Risper wanted to spend the weekend with her and their child prior to turning himself in. B-259. Sutton confirmed that Risper normally drove a black Jeep that she owned, and that she was unaware of its location in the days following the shooting. B-259.

Risper's close friend, Teara Harris ("Harris"), testified that she reserved a room at a hotel in Salisbury for Risper. B-275. Harris was aware that Risper

normally drove Sutton's black Jeep. B-275. The weekend immediately following the shooting, Harris saw the Jeep parked in front of her house but was unaware of how it got there. B-276. According to Harris, the person she was living with did not want the Jeep there because of its possible involvement in the shooting, so she drove it to a gas station in Preston, Maryland and left it there. B-276-77. Prior to dropping off the Jeep, Harris wiped down the areas she thought she had touched. B-277. After leaving the Jeep, Harris told Sutton where it was. B-277.

Staci Weldon ("Weldon"), Bailey's girlfriend, testified at trial. B-288-302. According to Weldon, about one month prior to Bailey's murder, she and Bailey burglarized a trailer in Bridgeville and stole an assault rifle and two large bags of marijuana weighing between two and four pounds. B-290. The pair then went to Oshea Waples' residence, where Bailey left the gun and some of the marijuana. B-290. After the burglary, Bailey explained to Weldon that his cousin, McArthur, "would be after us for doing what we did." B-291.

Shika Cannon ("Cannon"), was in front of her home with Bailey and Gray prior to the shooting. B-310. Cannon took her children inside, leaving Bailey and Gray outside. B-310. While inside her home, Cannon heard gunshots, responded outside, and saw a black Jeep pulling away. B-310. Cannon had seen the Jeep earlier in the day being driven by Risper and was aware that the Jeep was normally driven by Risper. B-311.

On the day of the shooting, Devean Sheppard (“Sheppard”) spent time with Bailey. B-446. At that time, Bailey told Sheppard that “Bugs” was trying to kill him. B-446-47. Sheppard testified that he did not know Risper’s real name; he only knew Risper as “Bug” and identified him in court. B-446. In the moments prior to the shooting, Sheppard and Bailey were in Sheppard’s car when Leval Farmer and Risper drove past them, slowing down and looking right at Sheppard and Bailey, which provoked a strong reaction from Bailey. B-447. Another trial witness and friend of Bailey, Yonta Clanton, also testified that prior to his murder, Bailey expressed the same concern for his safety and identified “Bugs” as the person who was going to harm him. B-444.

O’Shea Waples (“Waples”) also testified at trial. Waples and Bailey were good friends. B-314. According to Waples, in the weeks leading up to the shooting, Bailey was concerned for his safety and feared retribution for the burglary of the trailer. B-314. Bailey identified “Bug” and “Mike” as the people he thought were after him. B-314. Waples testified that about one week before Bailey’s murder, an unidentified man came to his house, threatened him with a gun and demanded the assault rifle and marijuana Bailey had left with Waples after the burglary. B-314-15. The man, who Waples later identified as “Mike,” left with the assault rifle, but Waples did not have any of the marijuana to give him. B-315. Shortly thereafter, “Mike” returned with another man, again demanding the

marijuana. B-315. At trial, Waples identified the second man as Risper. According to Waples, both men were armed. B315-16. Risper and “Mike” searched Waples’ car for marijuana and refused to allow Waples or his wife into their home. B-315. Risper and “Mike” did not discover any marijuana, and instead took Waples’ “chains.” B-316. Waples’ wife also testified about the incident and identified Risper in court as one of the men involved. B-319.

Days after the shooting, police located the Jeep in Maryland. B-247. The police searched the Jeep and discovered fifteen cell phones, a black cap, a black ski cap, an ID card belonging to Jamar Harmon, and a black cap and ski mask in the rear hatch area. B-321-22. Police also processed the Jeep for fingerprints and DNA. B-322. A forensic DNA analyst testified that Risper’s DNA was present on swabs taken from the steering wheel, a phone found in the passenger compartment, and the ski mask found in the Jeep. B-365.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT PERMITTED THE STATE TO INTRODUCE EVIDENCE OF RISPER'S MOTIVE FOR MURDERING BAILEY.

Question Presented

Whether the Superior Court abused its discretion by admitting evidence that Bailey stole marijuana and a firearm from Risper, who later tried to recover those items from a friend of Bailey.

Standard of Review

This Court reviews a trial court's decision to admit evidence of uncharged misconduct for an abuse of discretion.³

Merits of the Argument

Prior to trial, the State filed a *Motion In Limine* seeking to introduce evidence pursuant to Delaware Rule of Evidence 404(b) of Bailey's theft of marijuana and a firearm from Risper and Risper's subsequent attempt to recover those items from Oshea Waples. In a bench ruling, the Superior Court conducted a thorough analysis under Rule 404(b) and permitted the State to introduce evidence of Risper's prior bad acts. On appeal, Risper claims the Superior Court abused its discretion when it granted the State's *Motion In Limine*. He contends the evidence

³ *Allen v. State*, 644 A.2d 982, 985 (Del. 1994); *Pope v. State*, 632 A.2d 73, 79 (Del. 1993).

introduced did not satisfy the “plain, clear and conclusive”⁴ requirement because the witness testimony “was not based on their personal knowledge of the prior events that they described.”⁵ Risper’s claim is unavailing.

Prior Bad Acts Properly Admitted

The Superior Court did not abuse its discretion when it permitted the State to introduce into evidence testimony regarding Bailey’s theft of marijuana and a firearm from Risper and Risper’s attempt to later recover the stolen items – both events occurred within two to three weeks of Bailey’s murder. Testimony regarding the theft from Risper and the resultant recovery attempt by Risper was admissible to show Risper’s motive to commit Bailey’s murder.

In *Getz v. State*, this Court adopted the inclusionary approach to Rule 404(b) which provides that “the proponent is allowed to offer evidence of uncharged misconduct for any material purpose other than to show a mere propensity or disposition on the part of the defendant to commit the charged crime.”⁶ Evidence of other acts of misconduct is admissible when it has “independent logical relevance” and when its “probative value is not substantially outweighed by the danger of unfair prejudice.”⁷ Independent logical relevance means that the “evidence of other crimes must be material to an issue or ultimate fact in dispute in

⁴ *Renzi v. State*, 320 A.2d 711, 713 (Del. 1974).

⁵ Op. Brf. at 21.

⁶ *Getz v. State*, 538 A.2d 726, 730 (Del. 1988).

⁷ *Id.*; see also *Diaz v. State*, 508 A.2d 861, 865 (Del. 1986).

the case.”⁸ “Evidence of other acts of misconduct may be admitted where ‘it form[s] part of the background of the alleged act, to which it is inextricably related and without which a full understanding of the charged offense is not gained.’”⁹ If the evidence of other misconduct meets these standards, it is admissible.¹⁰

Under *Getz*, evidence of uncharged misconduct can be admitted if:

(1) the evidence is material to an issue or ultimate fact in dispute in the case; (2) the evidence is relevant to a purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition; (3) the uncharged misconduct is proved by plain, clear and conclusive evidence; (4) the act or acts of uncharged misconduct are not too remote in time from the charged offense; (5) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice; and (6) the jury is given an instruction concerning the limited purpose for which such evidence may be heard.¹¹

Further, in balancing the probative value versus prejudicial effect of the evidence, the trial court need also address nine factors outlined in *Deshields v. State*.¹² These factors are:

(1) the extent to which the point to be proved is disputed; (2) the adequacy of the proof of the prior conduct; (3) the probative force of the evidence; the proponent’s need for the evidence; (5) the availability of less prejudicial proof; (6) the inflammatory or prejudicial effect of the evidence; (7) the similarity of the prior wrong to the charged offense; (8) the effectiveness of the limiting instruction;

⁸ *Getz*, 538 A.2d at 734.

⁹ *Northwood v. State*, 1990 WL 168277, at *1 (Del. Sept. 5, 1990) (quoting *Getz*, 538 A.2d at 733).

¹⁰ *Weber v. State*, 547 A.2d 948, 954 (Del. 1988)(citing *Getz*, 538 A.2d at 731).

¹¹ *Id.*

¹² *Deshields v. State*, 706 A.2d 502, 506 (Del. 1998).

(9) the extent to which prior act evidence would prolong the proceedings.¹³

Here, the Superior Court considered each of the *Getz* and *Deshields* factors and correctly concluded that they weighed in favor of admitting evidence of the theft and Risper's attempt to recover the stolen items.¹⁴ As part of its analysis, the court addressed the "plain, clear and conclusive" requirement, and determined:

The two incidents will be established by eyewitness testimony. Staci Weldon, who is Mr. Bailey's girlfriend, was present when Bailey stole Mr. Risper's marijuana and gun, and can testify to that. Oshay Waples will testify that he bought two pounds of weed from Bailey, that he told Rell that Mike Lewis could have the weed back for the \$50 that he, Oshay Waples, paid for it. . . . [S]oon thereafter Mike Lewis came over to Waples' house and forced Waples to turn over the weed, and that Mr. Risper was present during that home invasion. Oshay Waples' wife was also present during that home invasion. . . . [W]e also have Bailey's hearsay statement that he stole Risper's drugs and gun. This is reliable because it is consistent with the testimony of the other witnesses as well as other events.¹⁵

The Superior Court did not abuse its discretion when it made the above determination.

¹³ *Id.* at 506-07.

¹⁴ Exhibit A to Op. Brf. at 3-14.

¹⁵ Exhibit A to Op. Brf. at 8-9.

The Testimony of Staci Weldon and Oshay Waples, and Bailey's Statements to Other Witnesses Established Proof of the Theft and Risper's Attempt to Recover the Stolen Items.

Staci Weldon testified that she participated in the theft of marijuana and a gun from a trailer in Bridgeville.¹⁶ At the time, Bailey told Weldon that Risper would likely “be after” him for the theft.¹⁷ Oshay Waples testified that about one week before Bailey’s murder, Risper and a person named “Mike” came to his house demanding the stolen marijuana and the firearm.¹⁸ When Waples could not produce the marijuana, the men took his necklaces.¹⁹ Waples’ wife, who was present during the incident, identified Risper as one of the men involved.²⁰ Bailey told several witnesses that he stole the marijuana and firearm, thus implicating him in a crime and, as the Superior Court noted, his hearsay statements were “reliable because [they were] consistent with the testimony of the other witnesses as well as other events.”²¹

Risper’s claim that the witnesses’ testimony was not based on their personal knowledge of the events that occurred is belied by the record. In sum, the State presented evidence of the theft of marijuana and firearm in the form of a witness who participated in the theft, two witnesses who were the subject of Risper’s

¹⁶ B-290.

¹⁷ B-291.

¹⁸ B-315-16.

¹⁹ B-316.

²⁰ B-319.

²¹ Exhibit A to Op. Brf. at 9.

attempt to recover the stolen items, and witnesses to whom Bailey admitted stealing the marijuana and firearm. The Superior Court did not abuse its discretion when it determined that the evidence of Bailey's theft of marijuana and a firearm satisfied the plain, clear and conclusive standard.

No Resulting Prejudice

Contrary to Risper's unsupported contention, the danger of unfair prejudice (i.e. that the jury would use evidence of the theft and Risper's attempt to recover the stolen items for an impermissible purpose) did not outweigh its probative value. Simply put, the theft was motive evidence. That is why the State sought its admission. Risper's characterization of the theft and his attempt to recover the stolen items as "propensity" evidence is not supported by the record. The fact that the items stolen were drugs and a firearm was incident to the theft, which provided the motive for the murder. The fact that Risper tried to recover those items served to corroborate Weldon's account of the theft and identify Risper as a person having an interest in the stolen items. In other words, the object of the theft was not significant to the State's theory of the case – the fact that Bailey stole the items from Risper was.

Risper's theory, that the State sought introduction of the theft evidence for an improper purpose under Rule 404(b), hardly makes sense. The evidence underpinned the State's theory of Risper's motive for the crime with which he was

charged, and plainly it was not offered to demonstrate his propensity for criminal activity. Evidence of motive may be properly admitted under Rule 404(b) even when the evidence touches upon a defendant's illegal activity.²² The danger of unfair prejudice here is severely diminished because the evidence that Risper murdered Bailey was strong. The State presented eyewitness testimony from Channell Gray, who saw Risper shoot Bailey. Although Risper was wearing a black mask, Gray, who knew Risper, identified him from a photo line-up and at trial. Several witnesses testified that they saw Risper in a Jeep that he was known to drive, in the Coverdale Crossing neighborhood immediately prior to the murder and saw him quickly depart the neighborhood in the Jeep immediately following the shooting. Risper's friend abandoned the Jeep at a gas station in Maryland immediately following the shooting, and when police searched it, they discovered two black masks, one of which had Risper's DNA on it.

²² See *State v. Patterson*, 2002 WL 745282, at *8 (Ohio App. 12 Dist. Apr. 29, 2002) (evidence of victim's theft of proceeds from defendant's drug sales properly admitted to demonstrate motive for murder); *People v. Kennedy*, 2007 WL 3309995, at *7–8 (Mich. App. Nov. 8, 2007) (evidence of victim's theft of drugs from defendant who was a drug dealer properly admitted to demonstrative motive for murder).

The record demonstrates that the probative value of the evidence of Bailey's theft significantly outweighed the danger of unfair prejudice, which, given the strength of the evidence against Risper, was minimal.

II. THE SUPERIOR COURT DID NOT ERR WHEN IT DENIED RISPER’S MOTIONS TO DISMISS FOR THE STATE’S UNTIMELY DISCLOSURE OF EVIDENCE.

Question Presented

Whether the Superior Court erred when it denied Risper’s motions to dismiss based on the State’s late disclosure of a witness interview and an unredacted police report.

Standard and Scope of Review

“This Court reviews claims of *Brady* violations *de novo*.⁴⁴ When delayed disclosure of *Brady* information occurs, it must be determined whether the disclosure of the cumulative exculpatory and impeachment evidence withheld by the State creates a reasonable probability of a different outcome.⁴⁵ As part of this analysis, [this Court] consider[s] whether the delayed disclosure precluded effective use of the information at trial.”²³

Merits of the Argument

On appeal, Risper claims that the State committed two separate *Brady*²⁴ violations. He contends the Superior Court erred when it denied his request to dismiss the case based on State’s failure to provide: (1) an unidentified witness’

²³ *Morris v. State*, 2019 WL 2123563, at *6 (Del. May 13, 2019) (citing *Robinson v. State*, 149 A.3d 518, 2016 WL 5957289, at *2 (Del. Oct. 13, 2016); *Wright v. State*, 91 A.3d 972, 993 (Del. 2014); *White v. State*, 816 A.2d 776, 778 (Del. 2003) (internal quotes omitted)).

²⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

recorded statement in which she claimed a person other than Risper confessed to shooting Bailey; and (2) the existence of a purported shoplifting “scheme” between Gray and Weldon. Risper is mistaken. To the extent the State made an untimely disclosure of exculpatory or impeaching evidence, Risper received the information with sufficient time to effectively use it and the Superior Court fashioned the appropriate remedy for the purported *Brady* violations.

To establish a *Brady* violation, a defendant must show (1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant.²⁵ Because the credibility and bias of witnesses can be central to the State’s case at trial, impeachment evidence can also fall under the *Brady* umbrella.²⁶ In *Giglio v. United States*,²⁷ the Supreme Court held that where the reliability of a witness may be determinative of guilt or innocence of a criminal defendant, nondisclosure of material evidence affecting the reliability of the witness justifies a new trial.²⁷ However, an untimely disclosure of *Brady* evidence (i.e. when the prosecution makes *Brady* evidence available during the course of a

²⁵ *State v. Wright*, 67 A.3d 319, 324 (Del. 2013).

²⁶ *United States v. Bagley*, 473 U.S. 667, 676 (1985); *Giglio v. United States*, 405 U.S. 150, 154-55 (1972).

²⁷ *Giglio*, 405 U.S. at 153.

trial) which a defendant is able to effectively to use, does not violate due process and *Brady* is not contravened.²⁸

Moreover, a trial judge has the ability to fashion a variety of remedies for a discovery violation, including late disclosure, under Superior Court Criminal Rule 16. As this Court noted in *Doran v. State*, “Superior Court Criminal Rule 16 sets forth four alternative sanctions: 1) order prompt compliance with the discovery rule; 2) ‘grant a continuance;’ 3) ‘prohibit the party from introducing in evidence material not disclosed;’ or 4) such other order the Court ‘deems just under the circumstances.’”²⁹ “[I]n determining the question of whether sanctions should be imposed, the trial court should weigh all relevant factors, such as the reason for the State’s delay and the extent of prejudice to the defendant.”³⁰

AE’s Statement to Police

On the day before jury selection and three days prior to the presentation of evidence, the State provided Risper with the recorded statement of a person identified in the record only as “AE.”³¹ Det. Csapo interviewed AE on April 1, 2019.³² During the interview, AE claimed that a person named “Laval” or

²⁸ *White v. State*, 816 A.2d 776, 778 (Del. 2003).

²⁹ *Doran v. State*, 606 A.2d 743, 745 (Del. 1992).

³⁰ *Snowden v. State*, 677 A.2d 33, 39 (Del. 1996).

³¹ B-46.

³² B-43.

“Lavull” confessed to shooting Bailey because Bailey was stealing from a local drug dealer.³³ AE’s statement did not implicate Risper.³⁴

Risper argues that he was unable to effectively use the fact that someone other than Risper claimed they were responsible for shooting Bailey. He contends “defense counsel might have altered trial strategy from the beginning to accuse someone else of being the gunman.”³⁵ However, the Superior Court fashioned a remedy that permitted Risper to use otherwise inadmissible hearsay evidence to advance that very defense. The trial judge denied Risper’s motion to dismiss, ordered the State to produce AE’s full name and permitted Risper to play AE’s recorded interview, “even though it’s all hearsay.”³⁶ The State provided Risper with AE’s name, however Risper was noncommittal about sending an investigator out to find AE, stating that he could, “[i]n theory.”³⁷ The court also denied Risper’s alternative request for a continuance, stating:

I will deny the request. I think the remedy is actually pretty good, under the circumstances. You will get a witness who will come in and offer hearsay testimony.

I have to be realistic. I think the likelihood of going to this witness and then perhaps getting to another person and have that person confess to a murder-in-the-first-degree charge seems extremely unlikely. So this might even be better than having a chance to go and

³³ B-43.

³⁴ B-44.

³⁵ Op. Brf. at 29.

³⁶ B-45.

³⁷ B-47.

talk to this witness. You'll never know for sure. I agree with you there, but it will get heard.

So that's the sanction for the State, that double hearsay will come in that would exculpate the defendant, Mr. Risper, in this case.³⁸

At trial, Risper cross-examined Det. Csapo about his interview with AE. Csapo confirmed that AE told him that "she had been told by someone that they were involved in the murder of Corey Bailey."³⁹ AE also said that person showed her where the gun was located.⁴⁰ Csapo testified that he did not conduct any follow up investigation or prepare a police report in connection with his interview of AE.⁴¹ Although he could have introduced AE's recorded statement into evidence, Risper did not.

Throughout the trial Risper's defense was that somebody else shot Bailey. This theory was borne out in closing argument, when Risper argued that a number of pieces of physical evidence and witness testimony pointed to someone else as the shooter.⁴² Risper, strenuously and at great length, highlighted AE's statement that someone else told her they shot Bailey and Det. Csapo's failure to investigate

³⁸ B-47.

³⁹ B-427.

⁴⁰ B-427.

⁴¹ B-428.

⁴² *See. e.g.* B-517-18.

her claim.⁴³ The record makes it abundantly clear that Risper had the opportunity to use AE's recorded statement and that he, in fact, made use of it.

“Moreover, the *Brady* material did not involve possible testimony that was likely, if given, to create a reasonable probability of a different outcome”⁴⁴ because of the strength of the case against Risper. His contention that the State “did not present other substantial evidence to establish [his] guilt,” ignores most of the record. The State presented an eyewitness who saw Risper shoot Bailey and identified Risper in court as Bailey's killer. Several witnesses testified that they saw Risper driving the Jeep around the Coverdale Crossing neighborhood prior to the shooting and saw the Jeep depart the area immediately following the shooting. Other witnesses testified about Risper's motive for killing Bailey. And, Risper's DNA was present on a ski mask found in the abandoned Jeep he was known to drive. The Superior Court did not err when it denied Risper's motion to dismiss based on the State's untimely production of AE's recorded statement.

The Shoplifting “Scheme”

Risper also claims that the State's untimely disclosure of a redacted police report warranted dismissal of his case. Staci Weldon testified that on the day of the shooting, “a woman had stopped me and asked me if I could get her little boy

⁴³ B-521-22.

⁴⁴ *Morris*, 2019 WL 2123563, at *6–7.

some clothes from the store, and how much would I charge her for them.”⁴⁵ Weldon admitted that she was going to get the clothing by shoplifting from a local store.⁴⁶ As part of discovery, the State provided Risper with a redacted police report detailing Weldon’s statement to Det. Csapo that included her plan to shoplift clothing for Channell Gray.⁴⁷ Gray’s name was redacted from Csapo’s report.⁴⁸ During Weldon’s testimony, one of the trial prosecutors realized that Risper did not have an unredacted copy and disclosed the error.⁴⁹ Risper cross-examined Weldon about the shoplifting, but Weldon claimed she could not remember the identity of the woman who had asked her to shoplift.⁵⁰ Weldon also denied telling Det. Csapo that the woman was Channell Gray.⁵¹ Csapo later testified on cross-examination that when he interviewed Weldon, she told him “she was stealing children’s clothing for Channell Gray.”⁵²

After Weldon testified, Risper requested dismissal of his case or, in the alternative, a mistrial.⁵³ The trial judge determined that while the information would have been helpful to Risper in attacking Gray’s credibility during her

⁴⁵ B-291.

⁴⁶ B-291.

⁴⁷ B-298.

⁴⁸ B-298.

⁴⁹ B-298.

⁵⁰ B-300-01

⁵¹ B-301.

⁵² B-425.

⁵³ B-308.

testimony, Gray's request to have Weldon steal clothing was "not about a material fact in the case."⁵⁴ The court denied Risper's motion to dismiss the case, but permitted him to question Det. Csapo about Weldon's statement.

Risper claims the Superior Court erred when it denied his motion to dismiss because the State's untimely disclosure "deprived [him] of the right to the effective, meaningful cross examination."⁵⁵ Risper's argument assumes that Gray would have admitting to asking Weldon to shoplift clothing. He does not account for the possibility that Gray could have denied asking Weldon to commit a crime or that Gray could have asserted her Fifth Amendment right if she believed her testimony would expose her to criminal liability. Even if Risper had the information when he cross-examined Gray, he would, at best, have an admission that Gray offered Weldon money to shoplift clothing for her child. There is no evidence in the record that Weldon shoplifted the items, and when Weldon testified, she acknowledged having the shoplifting arrangement with a woman, but denied that it was Gray. Risper could have then confronted Weldon with her prior statement to Det. Csapo, which implicated Gray. In other words, Risper would be in no better a position than the one in which he found himself with the untimely disclosure.

⁵⁴ B-309.

⁵⁵ Op. Brf. at 33.

Risper overstates the potential impact of cross-examining Gray about the shoplifting “scheme.” To be sure, Gray was a key witness for the State. When Risper cross-examined Gray, he used an actual theft conviction to attack her credibility.⁵⁶ Asking additional questions about a shoplifting that was never committed, in which Gray was not a direct participant, and which Weldon later denied Gray asking her to commit, would not have added much, if anything, in attacking Gray’s credibility. As the trial judge noted when he denied Risper’s motion to dismiss, “[i]t does affect her credibility, and I think when it’s all said and done, the defense is going to get to argue the point that they want to argue. The evidence is there to make that argument.”⁵⁷ Risper used the evidence in closing argument to attack Gray’s credibility:

Now mind you this witness frankly is somebody that has a problem with honesty. You heard her. She admitted she was convicted of theft, which is a crime of dishonesty. You also heard testimony that she and Staci Weldon were stealing items together, and in fact, they were doing that the date that Mr. Bailey was killed.⁵⁸

Not only did Risper use the shoplifting “scheme” evidence, he grossly misstated it. There was no evidence that Gray and Weldon “were stealing items together.” At best, the evidence was that Gray agreed to pay Weldon to “get” ten outfits for her son knowing that Weldon would be shoplifting. In any event, the fact that Risper

⁵⁶ B-62.

⁵⁷ B-309.

⁵⁸ B-517.

was unable to cross-examine Gray about the shoplifting “scheme” because of the State’s untimely disclosure did not result in prejudice. Weldon was able to, and did indeed, use the impeachment evidence as part of an attack Gray’s credibility in his closing.

There is not a reasonable probability that the result would have been different had the State disclosed the shoplifting “scheme” information in a timely manner. Risper cannot demonstrate a *Brady* violation because the untimely disclosure did not deprive him of the opportunity to effectively use the information.⁵⁹ The Superior Court did not err in denying Risper’s motion to dismiss or in refusing to declare a mistrial. Accordingly, reversal is not warranted.

⁵⁹ *White*, 816 A.2d at 778.

CONCLUSION

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

/s/ Andrew J. Vella
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(302) 577-8500

DATE: October 13, 2020

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MCARTHUR RISPER,)
)
 Defendant-Below,)
 Appellant,)
)
 v.) No. 56, 2020
)
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using MS Word.
2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 5,321 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Andrew J. Vella
Deputy Attorney General
ID No. 3549

DATE: October 13, 2020

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

VS.

MCARTHUR M RISPER JR

Alias: See attached list of alias names.

DOB: 1989

SBI: 00529391

CASE NUMBER:
S1805007714A

IN AND FOR SUSSEX COUNTY
CRIMINAL ACTION NUMBER:

IS18-06-0034
MURDER 1ST(F)
IS18-06-0036
PFDCF(F)
IS18-06-0035
CONSP 1ST(F)

COMMITMENT

ALL SENTENCES OF CONFINEMENT SHALL RUN CONSECUTIVE
LIFE SENTENCE

SENTENCE ORDER

NOW THIS 10TH DAY OF JANUARY, 2020, 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 IS18-06-0034- : TIS
MURDER 1ST

Effective January 10, 2020 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 with credit for 607 day(s) previously
served

AS TO IS18-06-0036- : TIS
PFDCF

- The defendant is placed in the custody of the Department
of Correction for 25 year(s) at supervision level 5

- No probation to follow.

AS TO IS18-06-0035- : TIS

APPROVED ORDER 1 June 16, 2020 13:48

Ex. A

STATE OF DELAWARE
VS.
MCARTHUR M RISPER JR
DOB: 1989
SBI: 00529391

CONSP 1ST

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5
- No probation to follow.

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE
VS.
MCARTHUR M RISPER JR
DOB: 1989
SBI: 00529391

CASE NUMBER:
1805007714A

The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Have no contact with family of

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

All financial obligations for this case are deemed uncollectible.

For the purposes of ensuring the payment of costs, fines, restitution and the enforcement of any orders imposed, the Court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full. This includes the entry of a civil judgment pursuant to 11 Del.C. 4101 without further hearing.

Should the defendant be unable to complete financial obligations during the period of probation ordered, the defendant may enter the work referral program until said obligations are satisfied as determined by the Probation Officer.

JUDGE E. SCOTT BRADLEY

FINANCIAL SUMMARY

STATE OF DELAWARE
VS.
MCARTHUR M RISPER JR
DOB: 1989
SBI: 00529391

CASE NUMBER:
1805007714A

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 | 120.00 |
| SHERIFF, KENT ORDERED | 90.00 |
| SHERIFF, SUSSEX ORDERED | 750.00 |
| PUBLIC DEF, FEE ORDERED | |
| PROSECUTION FEE ORDERED | 100.00 |
| VICTIM'S COM ORDERED | |
| VIDEOPHONE FEE ORDERED | 3.00 |
| DELJIS FEE ORDERED | 3.00 |
| SECURITY FEE ORDERED | 30.00 |
| TRANSPORTATION SURCHARGE ORDERED | |
| FUND TO COMBAT VIOLENT CRIMES FEE | 45.00 |
| SENIOR TRUST FUND FEE | |
| AMBULANCE FUND FEE | |

TOTAL 1,141.00

LIST OF ALIAS NAMES

STATE OF DELAWARE
VS.
MCARTHUR M RISPER JR
DOB: 1989
SBI: 00529391

CASE NUMBER:
1805007714A

MCARTHUR M RISPER
MCARTHUR M RISPER JR
MCARTHUR JR RISPER