



IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY WING,)	
)	
Defendant-Below,)	
Appellant,)	
)	
v.)	No. 320, 2023
)	
STATE OF DELAWARE,)	
)	
Plaintiff-Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE’S ANSWERING BRIEF

Carolyn S. Hake (No. 3839)
Deputy Attorney General
Delaware Department of Justice
State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

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NATURE AND STAGE OF THE PROCEEDINGS

In May 2021, a New Castle County grand jury indicted Gregory Wing and fourteen co-defendants, including Eiljah Coffield, for Illegal Gang Participation and other charges associated with the activities of the NorthPak street gang. (A3 at D.I. 2). The case was re-indicted in November 2021, and Wing was scheduled to be tried with Coffield. (A5 at D.I. 17; A18-69). At trial, the parties agreed to proceed on an amended version of the re-indictment, which charged Wing with Gang Participation with fifteen underlying offenses, Possession of a Firearm During the Commission of a Felony (“PFDCF”) (seven counts), Murder First-Degree (two counts), Attempted Murder First-Degree (four counts), Conspiracy First-Degree (three counts), and Attempted Assault in a Detention Facility.¹ (A70-86).

On August 22, 2022, Coffield moved to sever his case from Wing’s case.² The court granted Coffield severance as to the person prohibited charges, but denied severance of Coffield’s case from Wing’s case.³

Jury selection for Wing’s and Coffield’s trial began on February 20, 2023, and the fourteen-day trial began on February 21, 2023. (A11-12 at D.I. 49, 57). The jury found Wing guilty of all charges, except Attempted Assault in a Detention

¹ The indictment also included joint and separate charges against Coffield.

² *State v. Coffield*, 2022 WL 17684823 (Del. Super. Ct. Dec. 8, 2022).

³ *Id.*

Facility and two counts of PFDCF.⁴ (A12 at D.I. 57; B789-92). On August 11, 2023, the Superior Court sentenced Wing to two life sentences for the two counts of Murder First-Degree and, for the remaining charges, to 113 years of Level V incarceration, suspended after 85 years for decreasing levels of supervision. (A309-15).

Wing timely filed this appeal and an opening brief. This is the State's answering brief.

⁴ The jury found Coffield guilty of Gang Participation, Murder First-Degree (two counts), Attempted Murder First-Degree (five counts), Conspiracy First-Degree (five counts), PFDCF (nine counts), and Reckless Endangering First-Degree, and acquitted him of Attempted Assault in a Detention Facility and one count of Conspiracy Second-Degree. (B789-92). After the simultaneous bench trial, the court found Coffield guilty of five counts of Possession of a Firearm by Person Prohibited. (B780).

SUMMARY OF THE ARGUMENT

I. **Denied.** The admission of Kenneth Griffin's statement to police was not plain error. The State laid a proper foundation to admit his statement under 11 *Del. C.* § 3507.

II. **Denied.** The Superior Court did not abuse its discretion by precluding the defense from cross-examining Tyrie Burton about uncharged murders. Because Wing did not argue below that the evidence was admissible to show bias, it should not be considered on appeal. Wing cannot show plain error.

STATEMENT OF FACTS

Northpak

In the fall of 2020, law enforcement began investigating the criminal street gang identified as “NorthPak” after a series of violent crimes were committed in the City of Wilmington between November 2018 and April 2021. (B15-25, B50-51, B158-59, B300-01). Investigators learned that Northpak was engaged in an ongoing “violent feud” with M-Block Grimy Savages (“MGS”) and its aligned affiliates, which resulted in numerous shooting and murders. (B15-25, B50-51, B153-55, B157-58, B722-23, B744, B746-49). Members on both sides of the feud used social media to both promote their gang and antagonize opposing gang members, who NorthPak referred to as “opps.” (A104; B16-146, B150-55, B293-301, B722, B727-32, B744, B746-48, B767-71). The antagonization often led to more violence on the streets or made someone a target. (A190-91, A196-205; B300-01, B722-23, B732, B767-71).

Northpak’s primary objective was to shoot or kill rival gang members or their associates as revenge for the killing of Northpak members Christian Coffield (“Blow”), who was Coffield’s brother, and Rajion Dinkins (“Ray”), and to gain credibility through violence and intimidation. (A218, A272; B45, B70, B119-134, B148, B722-23, B726-27, B731-32, B742-45, B768-69, B771; B7). By summer

2020, Northpak was on the “offense,” looking for “ops” to kill to increase the “score.”⁵ (B499-501, B727, B733, B748-49, B770).

Through social media postings, prison records, interviews, information from seized cell phones, and their investigation into MGS, investigators identified Wing⁶ Coffield,⁷ Malik Benson,⁸ Davon Boyce,⁹ Markevis Clark,¹⁰ Jshawn Edwards,¹¹ Rashawn George,¹² Zymir Hynson,¹³ Stanley Jones,¹⁴ Caleb Lancaster,¹⁵ Isaiah Lecompte,¹⁶ Deshonne Moore,¹⁷ Amir Pierce,¹⁸ Markel Richards,¹⁹ Jacari

⁵ The “score” is a record of rival gang members, or individuals associated with rival gang members, killed by a gang. (A94-95; B501, B629, B727, B733, B748, B770, B784).

⁶ Wing, also known as Swerve, John Wick, and G Herb, (B21, 745), was one of Northpak’s leaders. (B724, B745, B780-81).

⁷ Coffield, also known as Beam (B21, B743), was one of Northpak’s leaders. (B723, B780-81).

⁸ Benson is also known as Mike B. (B22).

⁹ Boyce is also known as Flock. (B22).

¹⁰ Clark is also known as Mighty or Mightyyo. (B22).

¹¹ Edwards is also known as J Bhow. (B22).

¹² George is also known as Fetty. (B22).

¹³ Hynson is also known as Mirbow. (B22).

¹⁴ Jones is also known as Bandz. (B22, 742).

¹⁵ Lancaster is also known as Wavy. (B22-23).

¹⁶ Lecompte is also known as Auto. (B23).

¹⁷ Moore is also known as 2Looch. (B23).

¹⁸ Pierce is also known as 1Kmir or 1K. (B23, B720).

¹⁹ Richards is also known as Kels. (B23).

Robinson,²⁰ Khalil Rodriguez-Fitzgerald,²¹ Julius Smith,²² Dion Young,²³ and others, as Northpak members. (B15-146, B148-49, B 293-95). Northpak members referred to each other by nicknames; communicated through hand gestures, rap lyrics, and social media, including Instagram and YouTube; and often displayed firearms and gang-related tattoos.²⁴ (B15-146, B148, B293-301, B727-34, B745-46, B758-59, B763-64, B766-71, B775). Northpak member Pierce admitted that he, Wing, Coffield, Benson, Clark, Hynson, Edwards, Richards, Jones, Lancaster, and Smith were all members of Northpak, and Wing and Coffield were “shooters.” (B722-26).

In May 2021, Wing was indicted for two separate homicides and four attempted homicides. On September 8, 2020, Wing shot and killed Ol-leir Henry and attempted to shoot and kill Taquan Davis as they walked on North Pine Street in Wilmington. Less than ten minutes later, Wing attempted to shoot and kill Javar Curtis as he walked on Heald Street. Less than an hour later, Bryshawn Lecompte, who was with Jiveer Green, was shot in his car. A few days later, Wing shot and killed Davis outside a store at Elm and Harrison streets. Northpak considered Henry,

²⁰ Robinson is also known as Cari. (B23).

²¹ Rodriguez-Fitzgerald is also known as Stu. (B23).

²² Smith is also known as Littles. (B23-24).

²³ Young is also known as Fro. (B24).

²⁴ Northpak sometimes used rap lyrics to mirror actual crimes. (B699).

Davis, Curtis, Lecompte, and Green “ops” or associated with individuals who were considered “ops” of Northpak.

The September 8, 2020 Murder of Ol-Leir Henry and Attempted Murder of Taquan Davis

On September 8, 2020, at approximately 7:01 p.m., 17-year-old O-Leir Henry²⁵ and 19-year-old Taquan Davis,²⁶ who were “ops” of Northpak due to being MGS members or associates (A103-04, A151-53, A186-87; B118, B272-75, B279-83, B294-303, B538, B728, B752), Antionajsa Williams,²⁷ and another woman, were walking on the sidewalk in the 500 block of North Pine Street after attending a memorial. (B276-78, B285). A car with tinted windows pulled up beside them, the occupants rolled down the windows and opened the sunroof, and two black men wearing masks began shooting through the front and back windows and sunroof before speeding away. (A137-41, A153-55). Henry, Williams, Davis, and the other woman ran, and Henry, who had been shot, collapsed in the Bethel Villa apartment complex courtyard across the street. (A137-38, A142-47; B286-89). Williams, who was initially pushed to the ground by Henry, suffered a graze wound on her back.²⁸

²⁵ Henry is also known as Slim or Leir. (A103; B752).

²⁶ Davis, also known as Tink, was murdered four days after the incident before investigators could speak with him. (B271, B273).

²⁷ Williams is also known as Piggy. (A105).

²⁸ Williams had a .22 gun, but did not have time during the shooting to shoot back. (A145; B289-92). Afterwards, she hid the gun and left. (A146-47, A159-60).

(A142-47; B289). Although he was the primary target, Davis was not shot. (B280-82; B1; B2; B9).

Wilmington police officers (“WPD”) responded to a ShotSpotter notification at 500 North Pine Street and found Henry laying on the ground in Bethel Villa’s courtyard. (A138-44; B160-68, B219-27, B233-47, B270, B386-88). Henry, who had been shot in the head and torso, quickly lost consciousness. (B224-26, B717-19). Henry was transported to Christiana Hospital where he was pronounced dead. (B225-29, B255, B339, B717-19). Police found three .22 caliber shell casings and one 9mm projectile in the 500 block of Pine Street. (A114-15; B230-33, B247-54). The shooting was captured on surveillance camera. (B257-72).

Stanley Jones,²⁹ a Northpak member (B742), testified that Wing, Coffield, and he participated in the shooting. (B752). Wing was driving a Nissan Altima, which Jones had stolen earlier that day (B193-98), Coffield was in the back seat, and Jones was in the front passenger seat. (B501-06, B752-53). They were “spinning”³⁰ when they saw “ops” - Henry and Davis, walking with a group of females. (B752). Jones loaded Wing’s 9mm Beretta and Coffield’s .22 caliber firearm and gave Wing and

²⁹ Jones pled guilty to gang participation, theft of a motor vehicle, and robbery second-degree and agreed to cooperate with the prosecution in this case. (B739-42, B749-51).

³⁰ “Spinning” and “spin the block” are slang for trying to find “ops” or “somebody that [Northpak] was beefing with.” (A93; B600, B743).

Coffield their guns. (B753, B761). Wing then stopped next to Henry and Davis, and Wing reached over Jones and fired the Beretta at them. (B753, B761). Because of his proximity to Wing's gun, Jones was not able to hear if Coffield fired his .22. (B753, B761). As Wing drove away, they threw shell casings from the car. (B753).

The September 8, 2020 Attempted Murder of Javar Curtis

Jones testified that, immediately after Henry's murder, Wing drove with them in the Altima to Southbridge. (B753-54, B760). Around 7:09 p.m., they spotted 15-year-old Javar Curtis, who they knew as "Var from East," walking home from his grandmother's house.³¹ (B341-44, B360, B754). As they drove by, Curtis noticed the Altima. (B344-46). He saw two black men in the car wearing masks, who were "looking at [him] real hard." (B344-46, B350). Curtis, who had fought with a Northpak member the week prior, crossed the street to avoid the car because he was concerned that they were Northpak gang members. (B342-47, B357-60). When Curtis saw the car again a few minutes later, he ran, and Jones, Wing, and Coffield lost sight of Curtis temporarily. (B344-48, B754).

According to Jones, Wing quickly found Curtis walking in the 500 block of Heald Street, and Coffield opened the rear driver's side window and began shooting at Curtis because Northpak was "beefing with east side people." (B347-49, B754).

³¹ Curtis testified under a plea agreement and cooperation agreement reached with the State in connection with unrelated charges. (B355-57, B364-74).

Curtis, who saw two guns, including a 9mm, coming from the car, ducked and ran to hide, narrowly avoiding being struck in the face by bullets. (B349-53). After the shooting, Curtis received threatening social media messages from Northpak, indicating they were going to kill him. (B361-63, B370-72).

WPD officers responded to 502 Heald Street, after receiving a Shotspotter alert at 7:09 p.m. and a 911 call reporting shots fired at 7:10 p.m. – approximately nine minutes after Henry was shot a mile away on Pine Street – and found four .22 caliber shell casings. (A105-09, A115-16; B375-84, B388-93). Investigators did not find any potential victims or eyewitnesses to any crimes that may have been committed. (B379-80, B391-94). However, surveillance video captured by CityWatch cameras showed a brown Nissan Altima with tint and a sunroof circle the block before stopping in the 500 block of South Heald where someone's arm extended out a window and fired a weapon toward where investigators found shell casings, and a man ducking behind a vehicle before the Nissan continued north. (B351-52, B394-411, B754). Investigators learned that Curtis, who had problems with Northpak, was the individual who had ducked. (A107-08; B353-55, B370-72, B402-08, B414-15). Investigators subsequently identified the vehicle as a stolen, bronze Nissan Altima, which Wing was driving when he was arrested and pled guilty to receiving as stolen property. (A166-67; B217-18, B406-10).

The September 8, 2020 Attempted Murders of Bryshawn Lecompte and Jiveer Green

Jones testified that, less than an hour later, at approximately 7:56 p.m., Wing, Coffield, and Jones, who were still in the Altima, spotted 18-year-old Bryshawn Lecompte³² driving with Jiveer Green, who was a front seat passenger. (B457-62, B755-56, B760). According to Jones, Wing, who was still driving, followed Lecompte, who Northpak considered an “opp,” because he “was somebody [Northpak] was beefing with” and had disrespected Northpak in rap videos.³³ (A103-04, A303-04). In the area of 7th and Jackson streets, Lecompte stopped his car to wait for a friend. (B460-62). Wing stopped next to the driver’s side of Lecompte’s car, and Jones, who was in the front passenger seat, stuck his arm out the window and shot Wing’s 9mm Beretta at Lecompte and Green several times.³⁴ (B462-66, B755-56). Coffield also shot at them with the .22. (B755). Green was able to duck, but Lecompte was struck. (A111). Lecompte and Green quickly drove to St. Francis Hospital. (B465-66).

³² Lecompte, also known as Crafty Crew, died before trial in an unrelated incident. (A111-12, A303).

³³ Lecompte and Green were associated and friends with individuals who would be considered “ops” of Northpak. (A112-13, A303-04). Green is also related to Lecompte, Davis, and Henry. (A113; B458-59).

³⁴ The 9mm Beretta was stolen on September 4, 2020 from a woman staying with a group of people, including Jones and Coffield, at a motel in Newark. (B169-75, 756). Wing eventually took it from the person who stole it and regarded it as his own gun. (B756).

WPD officers responded at 7:57 p.m. to the 700 block of North Jackson Street after a ShotSpotter alert and discovered three 9mm shell casings and seven .22 caliber shell casings in front of 1001 West 7th Street. (A109-11, A116; B416-33). While there, officers learned that Lecompte had arrived at St. Francis Hospital suffering from a gunshot wound. (A110-12; B434-35).

Lecompte told emergency personnel that he was stopped at a light when a bullet hit him in the leg. (B445-46). Lecompte was treated for gunshot wounds to his left leg and arm. (B434-54). Investigators recovered projectiles from inside Lecompte's car. (B469-79).

Social Media and Wing's Statements Linking Wing to the September 8, 2020 Shootings

Social media posts linked Wing to the incidents. (B161). At 5:17 p.m. on September 8, 2020—a few hours before Henry's death and the attempted murders of Davis, Curtis, Green, and Lecompte—Coffield and Wing's brother communicated through Instagram about "ops" being on Pine Street:

[Wing's brother]: Wya?³⁵
[Coffield]: North
[Wing's brother]: Oops on Pine
[Coffield]: hot out there?
[Coffield]: the boys?³⁶
[Wing's brother]: Nah

³⁵ "YWA" is slang for where ya at. (B304).

³⁶ "Hot out there" and "the boys" are slang for police. (B307-08).

[Coffield]: Gary go grab my joint³⁷
[Wing's brother]: Tell Swerve [Wing]
[Coffield]: say no more

(B304-09). A moment later, at 5:20 p.m., Coffield messaged Wing through Instagram:

[Coffield]: Yooo wya
[Wing]: Crib Rey get dressed
[Coffield]: hurry up [emoji]
[Coffield]: they out
[Wing]: Opps?
[Wing]: Solid
[Coffield]: yeah
[Coffield]: gotta grab my ball³⁸
[Coffield]: so hurry up n...

...

[Coffield]: on my way
[Wing]: Bro stop rushing me
[Wing]: Told you bout that
[Wing]: How you get booked³⁹

(B309-15).

A few minutes later, Wing sent Coffield and Lancaster “selfie style photo[s] with a magazine for a weapon,” showing a live round of ammunition. (B316-30). Wing also sent photos to Lancaster and others of Wing holding a firearm, consistent with the 9mm Beretta that Wing was arrested with on September 16th, and the

³⁷ “Gary” is slang for getting ready to, and “joint” is slang for firearm. (B308-09, B313).

³⁸ “Ball” and “basketball” are slang terms for a gun. (B308-09, B743).

³⁹ “Booked” is slang for arrested. (B314).

messages: “10,” “1 in dome,” “Loud ass 10,” and “9mm Beretta.” (B320-30, B674-75).

About an hour before Henry’s murder, Coffield and Wing again exchanged messages:

[Coffield]: out back

[Wing]: Here I come brody

(B318-20).

Then, at 8:12 p.m., about an hour after Henry’s death and fifteen minutes after Lecompte was shot, Lancaster told Wing that the “ops” were already saying that he and Wing did the shooting, and Wing, who was still with Jones and Coffield, took responsibility for the shootings in his reply:

[Lancaster]: you cool brody

[Wing]: Yupp

[Lancaster]: Opps saying that was me and you bro

[Lancaster]: Already

[Wing]: My wreck⁴⁰

(B333-36, B787; *see* B331-33).

About ten minutes later, at 8:26 p.m., Lancaster sent Wing a photograph of Wilmington officers attempting to render aid to Henry’s lifeless body, while Davis sat nearby. (B336-38). In the message, Lancaster said, “Omgggggg,” “N..., got

⁴⁰ “Wreck” is slang for “who put in the work” to commit the crime or “did a shooting.” (A97; B743).

stretched like ah limo out there.”⁴¹ (B338). Lancaster then sent another photograph after Henry was pronounced dead, stating, “Da N... is gone bro.” (B338-09).

A few hours after Lecompte was shot and Henry was killed, Wing contacted Lancaster and Benson to create an alibi. (B484, B488-89). He messaged Lancaster at 10:41 p.m. on September 8, 2020: “Gotta pic at da airport?”, “Rey post it,” and “Say Atlanta Georgia.” (B484-87). Lancaster responds, “Naaaa ion got one ask mike bizz [Northpak member Bensen][.] He got a lot of em.” (B487). Immediately, Wing messaged Benson, asking, “Gotta pic at da airport?” (B493-96). Benson sent Wing two photographs, including one of clouds taken from inside an airplane, and told him to post them in the morning. (B490-96). A few minutes later, at 11:09 p.m., Wing posted a picture on Instagram of himself holding a black Beretta 9mm. (B496-99).

At 10:39 a.m. the next day, Lancaster told Wing to “post [the photo Benson sent him the night before.] Put Atlanta Georgia[.] I posted mine.” (B491-92). Wing responded, “rey post mine,” “say somewhere you not,” “Don’t want mfs feel me.” (B492). Meanwhile, Coffield messaged someone on Instagram: “im tryna duck meat somewhere fr he in critical.”⁴² (B513-14).

⁴¹ “Stretched” is slang for killed or shot. (B758).

⁴² “Duck meat” is slang for laying low. (B514-15).

On September 10, 2020, Wing bragged about the September 8, 2020 shootings on Instagram in messages and his stories, stating, “check da score too,” “n... I’m dropping shit[.] lol.” (B499-501, B784).

The September 12, 2020 Murder of Taquan Davis

After Henry was killed on September 8, 2020, Davis posted a photo of Henry on his Instagram and commented, “I’m sorry [blood, tear, crying emoji]. It’s my fault [broken heart emoji]. I was supposed to protect you and I failed you. I’m so sorry.... Why couldn’t it just be me.” (B302-03).

On September 10, 2020, Davis posted an Instagram Live broadcast, showing “opps” his location and stating he would “[r]ather be wit slim [Henry] and Ron [Taron Whaley]⁴³ atp come get me location dropped I’m at the park.” (B595-96). Wing viewed the video multiple times and messaged Lancaster: “I should Go smoke that n...” (B596-607). Lancaster responded, “I was thinking that[,] [b]ut he on live, 200 mfs in there bro.” (B607-08). Wing agreed, “It’s federal over there tho.”⁴⁴ (B608). Wing and Lancaster continued to send messages insulting Davis, and Wing posted a live video antagonizing Davis. (B608-14).

⁴³ Whaley, who was associated with MGS, was murdered in August 2020. (A185; B117-18, B727).

⁴⁴ “Federal” is slang for police, snitches, or informants could be watching. (B78).

At 4:57 p.m. on September 12, 2020, Jones stole a dark colored Hyundai Santa Fe, which had a large decal of a peace sign on the rear window, from a gas station in New Castle. (B562-68, B757).

Shortly thereafter, Davis, Williams, and another person left a barbecue and drove to the corner store at Elm and Harrison. (A147-49; B540-42). After going inside the store for a few moments, Davis returned to the car and got inside. (A149; B549-57). When someone called Davis's name, he exited the vehicle and shots suddenly rang out. (A149). Davis ran toward Chestnut Street while holding his chest and collapsed. (A150-51).

Jones testified that he was with Wing, who was driving the stolen Hyundai, when they saw Davis, who Wing had tried to shoot on September 8, 2020, in front of the store. (B757-58, B760). As they "spin[ed] the block," Jones asked Wing, who had the Beretta 9mm, if he could shoot Davis.⁴⁵ (B758). Wing, however, reached over Jones and shot Davis through the front passenger window with the Beretta. (B758). Wing then drove to Wawa, and they went on Instagram live "laughing." (B758). They parked the car near Coffield's house. (B759).

Officers responding to a Shotspotter alert from the 200 block of South Harrison Street found Davis on the ground. (B519-30, B536). Davis had been shot

⁴⁵ Surveillance video captured the stolen Hyundai, which had a large white sticker on the back, circling the store before returning to where Davis was hanging out with Williams and another woman. (B543-61, B582-89).

multiple times in his chest and mouth, with one bullet entering his heart and lungs. (B531, B716a-d). Davis died from gunshot wounds to his left arm and chest. (B716a-d).

Investigators did not find any shell casings or other ballistic evidence at the scene. (A169-70; B529-30, B532-33, B539). About six months later, investigators recovered the stolen Hyundai parked near Coffield's house where Wing and Jones abandoned it shortly after the murder. (A170-71; B569-72). Three 9mm shell casings found inside the vehicle matched Wing's Beretta 9mm firearm. (A171; B573-81, B659-61, B673-74).

Less than an hour after Davis was killed, Wing, who had accessed articles reporting Davis's homicide (B590-93) and received a message from Lancaster with an article (B593-94), messaged Northpak member Anthony Harrigan, asking for the Nissan keys and telling him to bring them to him at Coffield's house. (B615-16). Wing also bragged to his younger brother about shooting Davis:

[Wing's brother]: think the n... yeck his self

[Wing]: Who

[Wing's brother]: tink [Davis]

[Wing] ya brother wreck Brody

[Wing's brother]: [tears of joy emojis] facts.

(B618-23). Wing admitted to Kenneth Griffin,⁴⁶ who grew up with Northpak members and was like their big brother, and Northpak member Pierce⁴⁷ that he killed Davis and Henry.⁴⁸ (A373-73, 297-98; B719-20, B722, B735; B9; B10).

As he did previously, Wing messaged Benson asking for photographs to create an alibi, stating, “I’m outta town,” “Got some shit of you driving?” (B623-25). Benson sent him a short video from behind the wheel of a vehicle driving on the highway. (B624-25).

On September 14, 2020, Coffield and Wing celebrated and mocked Davis’s death. (B626-30). Coffield posted on Instagram:

who ever diss gettin it to just saying [emoji]
tink [Davis] cant
his casket finna be big asf
should have seent him for the last time..
was pumpin olier [Henry] shit [emojis]
thought he was gon make it?
breath, breath

(B626-30; *see* B104-06). Wing also posted on his Instagram story: “WE RUN DA CITY (Winking kissy face emoji).” (B784).

⁴⁶ Griffin is known as “Dot,” “Dotters,” “OG,” or “Old Head.” (B708).

⁴⁷ Pierce pled guilty to gang participation and agreed to cooperate with the prosecution in this case. (B719-22, B736-37).

⁴⁸ Griffin did not sign a cooperation agreement in this case. (A300-01).

Wing's Arrest

Around 12:40 a.m. on September 16, 2020, Delaware State Police (“DSP”) arrested Wing at the Wawa on Philadelphia Pike and Harvey Road after he was observed exiting a brown Nissan Altima that had previously been reported stolen on September 8, 2020. (B142, B176-92). When officers approached Wing, he attempted to flee on foot, but was apprehended by police. (B180-81). Police found a black 9mm Beretta handgun containing an empty magazine and eleven 9mm live rounds in Wing’s waistband. (B181-82). Police also located three spent 9mm shell casings on the Altima’s windshield. (B182-84). Wing’s arrest was captured on surveillance video. (B187-92). Wing’s fingerprints were found at various locations on the Altima and on a receipt inside the car. (B199-203).

Wing subsequently was charged and pled guilty to Carrying a Concealed Deadly Weapon – the 9mm Beretta used in the September 8 and 12 shootings, and Receiving Stolen Property – the Altima, on May 4, 2021.⁴⁹ (A115-17, A175).

Ballistics

Ballistic analysis revealed that the .22 caliber shell casings recovered from the shootings on September 8 and 12, 2020 were fired from the same gun.⁵⁰ (A113-17,

⁴⁹ These charges are included in the listed predicates for the Gang Participation charge in this case. (A71-74, A117).

⁵⁰ The .22 firearm was never recovered. (A117).

176; B638-42, B645-49, B657-59, B668-71). Ballistic evidence also showed that the 9mm shell casings recovered from the scene of the September 8, 2020 Lecompte/Green shooting, and the 9mm casings recovered from the stolen Hyundai and Altima, were fired from the 9mm Beretta seized from Wing. (A113-17, A166-67; B481, B631-37, B648-51, B659-68, B672-74, B676-77). Wing's 9mm Beretta also ballistically matched the 9mm projectiles recovered from the scene of the September 8, 2020 Henry shooting and from Henry's and Lecompte's bodies. (A113-17, A173; B480-81, B643-44, B652-55, B668-70).

Cell Tower

Cell tower location plotting established that the phone number associated with Wing was active in the area of all three shootings on September 8, 2020. (B204-15).

November 25, 2020 Shooting

After Wing was released from custody following his September 2020 arrest, Wing posted on Instagram: "THINK DA FIELD NEED ME DA OPPTS HAD A LONG ENOUGH BREAK." (B783). Subsequently, on November 25, 2020, Wing and Lancaster shot Qadir Fistzgilies with a semi-automatic on Jefferson Street, which was captured on surveillance cameras. (B772-74, B779-80, B786). Before the shooting, Wing was pictured that month in numerous photographs and Instagram

videos holding firearms. (B776-778, B785). Wing subsequently was charged and pled guilty to attempted assault first-degree.⁵¹ (B772-74).

Gang Participation

Wing and Coffield were active participants in the Northpak gang. The indictment included the three September 8, 2020 shootings and the September 12, 2020 shooting as predicate offenses. The State also introduced the guilty pleas of other co-defendant Northpak members to show that Northpak engaged in criminal activity. (B700-06).

⁵¹ This charge is included in the listed predicates for the Gang Participation charge in this case. (A71-74; B772-73).

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING KENNETH GRIFFIN'S OUT-OF-COURT PRIOR STATEMENT UNDER 11 *DEL. C.* § 3507.

Question Presented

Whether the Superior Court abused its discretion by admitting Griffin's statement into evidence pursuant to 11 *Del. C.* § 3507.

Standard and Scope of Review

This Court reviews the admission of an out-of-court statement under 11 *Del. C.* § 3507 for abuse of discretion.⁵² “Whether a witness made his out of court statement voluntarily is a question of fact, and [this Court] review[s] the trial judge's determination of that question to ensure that competent evidence supports it. Thus, the trial judge's decision to admit the section 3507 statement is reversible only if the decision was clearly erroneous.”⁵³ Where no timely and pertinent objection is raised,

⁵² *Turner v. State*, 5 A.3d 612, 615-16 (Del. 2010).

⁵³ *Taylor v. State*, 23 A.3d 851, 860 (Del. 2011) (Steele, C.J. and Ridgley, J., dissenting) (citing *Ortiz v. State*, 2004 WL 77860, at *2 (Del. Jan. 15, 2004) (citing *Martin v. State*, 433 A.2d 1025, 1032 (Del. 1981); *Flonnory v. State*, 893 A.2d 507, 515 (Del. 2006))).

this Court reviews for plain error.⁵⁴ The burden is on the defendant to demonstrate plain error.⁵⁵

Merits

Approximately two and a half years before Wing's trial, Kenneth Griffin, who was facing unrelated charges in Pennsylvania, asked ATF agent Veronica Hnat, who often worked with WPD, to speak with a Wilmington detective about Northpak. (A260-61). WPD Detective Kane interviewed Griffin on October 30, 2020 at a courthouse in Media, Pennsylvania. (*Id.*). Detective Kane did not know who Griffin was before that meeting. (*Id.*). Before speaking to Griffin about Northpak, Detective Kane read Griffin his *Miranda* rights. (*Id.*). Griffin indicated that he understood his rights and wanted to speak to Detective Kane. (A261-62).

During the interview, Griffin told Detective Kane that he had grown up with Northpak members and was "like a big brother." (B4). Although Griffin had not witnessed any crimes, he told investigators that Wing had made inculpatory statements to him about committing several crimes. (A264-65; B9; B10). Specifically, Griffin said that Wing had admitted to shooting Henry and Davis using the firearm that he had when he was arrested. (A261-62; B9; B10).

⁵⁴ Supr. Ct. R. 8; *Woodlin v. State*, 3 A.3d 1084, 1087 (Del. 2010).

⁵⁵ *Id.*

Detective Kane subsequently returned to Media and attempted to speak with Griffin again, but Griffin refused to speak with investigators. (A278-82, A287, A290-91). Before trial, the State subpoenaed Griffin to appear for trial preparation, but he failed to appear. (A282). Griffin eventually met with prosecutors during trial preparations after being arrested on a material witness warrant. (A278, A287-89).

At trial, Griffin was an uncooperative witness for the State. (*See* A254-58, A280-301). Griffin claimed that, although he spoke to Detective Kane on October 30, 2020 about Northpak on his own volition, Griffin told the detective that he did not want to speak to him. (A254-57). When asked if he told the truth when he spoke to Detective Kane, Griffin replied, “Yeah, I spoke on Butter. Yeah.”⁵⁶ (A257-58).

Griffin’s trial testimony was then interrupted to present further foundational testimony from Detective Kane before playing portions of Griffin’s audiotaped October 30, 2020 statement. (A258-59). Detective Kane testified that he spoke to Griffin on October 30, 2020, after being notified by ATF agent Hnat that “there was an individual who was facing some charges in Pennsylvania that ha[d] requested to speak with a Wilmington detective about a group called Northpak.” (A260-62, A264). Detective Kane “didn’t know him before this.” (A264). Detective Kane

⁵⁶ Although “Butter” was Shareef Hamilton’s nickname (A274), it was also the nickname of Henry’s brother, Oliver Henry. (*See* B9). During Griffin’s interview with investigators in October 2020, Leir is referred to as “Baby Butter.” (B9). At trial, Griffin also referred to Leir as “Butter’s” brother. (A294).

read Griffin, who was in custody as a result of the Pennsylvania case, his *Miranda* rights. (A261). Griffin said that he understood his rights and wished to speak with investigators. (A261-62). Investigators then had a conversation with Griffin about Northpak, members of Northpak, and specific crimes that had happened in Wilmington, including Henry's and Davis's murders. (A262-63). Griffin then disclosed that, although he was not an eyewitness, Wing told about those crimes. (A264-65). Griffin also told Detective Kane that he was telling the truth in the statement he gave. (A265). Detective Kane did not recall if Griffin had said at that time that he wanted to get his bail in Pennsylvania lowered. (A265-66).

When asked by the court whether there were any objections to the foundational requirements of section 3507 being met, Coffield objected that the State did not lay a proper foundation showing that Griffin's statement was voluntary:

[Coffield]: I don't think it's voluntary. He was in cuffs and in custody, and it doesn't sound like it was voluntary to me. I know he did contact them, but also I think he's just talking about not the offense that occurred but just hearsay.

The Court: That's a different objection.

[Coffield]: Okay. All right.

The Court: Okay. But talking about the foundation to 3507.

[Coffield]: That's it.

(A267). Wing does not appear to have made any objection or to have joined Coffield's objection:

[Wing]: In all honesty.

The Court: 3507 is not in your neighborhood.

[Wing]: No, it's not, and I didn't know how much I can get in on the examination.

The Court: That's a statute that's in Delaware.

[Wing]: Yeah.

The Court: So anyway, the requirement has to be that the statement be made voluntary, and I think that's what the focus of your objection is, Mr. Heyden [Coffield's counsel].

[Coffield]: Right.

(A267-68). The Superior Court subsequently overruled Coffield's objection and found the State had established that Griffin's statement to police was voluntary:

The evidence is that [Griffin] reached out to Special Agent Hnat and that she reached out to Detective Kane. Sounds through the questions you elicited that he ... may have been trying to have his bail reduced, which makes a lot of sense, which would also be ... tending to sell a voluntary statement, but the evidence is that he was given his Miranda warnings and waived them and consented to make a statement, so that means it was a voluntary statement in my view.

So for that reason, and we've touched on the issue of truthfulness here and on the topics of the conversation, so I think the 3507 requirements have been met.

Now ..., obviously statement of the defendant is not hearsay except in the vernacular and would be admissible.

(A268-69). The court then confirmed with the parties that Griffin's statements had been redacted to avoid any *Bruton*⁵⁷ issues and to focus on firsthand knowledge of Northpak, and it permitted the State to introduce admissions made by Wing, noting the absence of "specific objections related to the statements themselves apart from the admissibility under 3507." (A269).

Before playing Griffin's audiotaped statement from October 30, 2020, Detective Kane testified that it was fair to say that Griffin spoke to him because he wanted his bail lowered, but the detective did not have any power to do that. (A270). Ten excerpts from the statement were played for the jury. (A270-75; B4; B5; B6; B7; B8; B9; B10; B11; B12; B13). In cross-examining Detective Kane, Wing acknowledged that Griffin "sounded like somebody who was eager to talk to [him]" because of his Pennsylvania charges. (A275-76).

On cross-examination, Griffin testified that he was facing 41 years in Delaware County because he pled guilty to four felonies, but he had not been sentenced. (A280-81). When asked if he anticipated getting a benefit from his testimony, Griffin stated that Detective Kane told him that they could not promise him anything and that he did not expect the State to do anything at his Pennsylvania sentencing. (A281-82). Griffin also acknowledged that he had failed to appear for a subpoena and was jailed on a \$100,000 cash bail. (A282). Griffin claimed that

⁵⁷ *Bruton v. United States*, 391 U.S. 123 (1968).

when investigators came to speak to him for trial preparation, “a lot of that right there is botched ... because the reality is ... I don’t even know [Leir],” the use of nicknames may have caused him to say the wrong name, and he said the name Leiry because of the benefit he hoped to get from making his statement. (A282-83, 290). Griffin also testified that he provided his October 30, 2020 out-of-court statement because, despite no cooperation agreement with the State, he was hoping to get a benefit at that time. (A282-87). He refused to meet with investigators again because he could not get “cooperation” from them on the charges. (A287). Griffin acknowledged, however, meeting with investigators close to the March 2023 trial, but stated that they “left that conversation out” regarding Coffield’s involvement in a murder that took place while Wing was in jail. (A288, 292-93). Griffin also claimed that Wing never told him that he killed Davis. (A291).

On re-cross examination, Griffin agreed that he told investigators in October 2020 that Wing told him that he killed Davis. (A298). Griffin admitted that he had talked to Wing and Coffield while they were awaiting trial. (A299). He denied telling Wing and Coffield, however, that he would not testify, claiming only “Olleir [Henry, whom he had earlier claimed to not know his name,] and them mom” knew that he was supposed to come to court. (A299-300). He admitted that he had not signed a cooperation agreement in this case. (A300-01).

Although Coffield argued below that Griffin’s statement was involuntary because he “was in cuffs and in custody,” Wing does not appear to have joined in Coffield’s argument. (*See* A267-69). Because Wing now raises an entirely different argument (Griffin’s statement was not voluntary because Griffin testified that he did not want to speak with investigators that day, investigators used “trickery” to lead Griffin into believing meeting with them would help him lower his Pennsylvania bail, and Griffin testified most of the statement was not true (Opening Br. 29-32)), his claim is waived on appeal absent plain error.⁵⁸ He cannot show such error. Even if Wing had not waived this issue, Wing’s argument fails.

Wing also contends for the first time that the Superior Court erred when it allowed Griffin’s statement to be introduced under section 3507 because Griffin did not testify that his statement to investigators was truthful. (*Id.* 32-34). Wing is incorrect; the foundation was proper, and the admission of the statement was not plain error.

The trial court properly admitted Griffin’s redacted, recorded statement into evidence after the State laid a sufficient foundation under 11 *Del. C.* § 3507. Section

⁵⁸ *See Woody v. State*, 2019 WL 4644049, at *6 (Del. Sept. 23, 2019) (reviewing defendant’s argument on appeal for plain error where defendant did not join in co-defendant’s argument below); *see also Ward v. State*, 2020 WL 5785338, at *4 (Del. Sept. 28, 2020) (reviewing defendant’s argument that court erred by admitting out-of-court statement under 11 *Del. C.* § 3507 for plain error where not preserved); *Cruz-Webster v. State*, 2017 WL 464536, at *5 (Del. Feb. 2, 2017) (same); Supr. Ct. R. 8.

3507 provides that the prior voluntary, out-of-court statements of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive testimonial value.⁵⁹

To introduce a witness's section 3507 statement, the offering party must initially establish: (1) the statement was voluntary; (2) the witness must testify about the content of the prior statement and whether or not it is true; and (3) the witness must be available for cross-examination.⁶⁰ While the veracity of the statement must be examined, "there is no requirement that the witness either affirm the truthfulness of the out-of-court statement, or offer consistent trial testimony."⁶¹ This Court employs "a case-by-case approach in determining whether a prior statement has been admitted into evidence under section 3507 in violation of an accused's Sixth Amendment right to confrontation."⁶²

Here, the State satisfied the foundational requirements in its direct examination of Griffin and Detective Kane. Griffin's statement was shown to be voluntarily given under the totality of the circumstances, notwithstanding his testimony that he did not want to speak to Detective Kane; he was subject to direct

⁵⁹ 11 *Del. C.* § 3507(a).

⁶⁰ *Woodlin*, 3 A.3d at 1088.

⁶¹ *Blake v. State*, 3 A.3d 1077, 1082-83 (Del. 2010).

⁶² *Id.*

examination sufficiently touching upon the events referred to in the recorded statement; he was questioned as to the truthfulness of the out-of-court statement; he was thereafter available for cross-examination; and he was present during the playback of his out-of-court interview. Griffin's statement was therefore properly admitted.

Wing nevertheless claims that the State did not lay a proper foundation showing that Griffin's statement was voluntary. (Opening Br. 29-32). Wing identifies portions of Griffin's trial testimony during which Griffin said he did not want to speak to Detective Kane on October 30, 2020 and that he turned detectives away at least three times even though they brought him donuts. (*Id.*). Wing also claims that "the trickery used by Detective Kane in leading Griffin to believe his meeting with him would help Griffin in lowering his substantial bail [despite not having the power to do that or any "intention of doing"] eradicates the voluntariness of the statement." (*Id.*). Wing is mistaken.

Wing's claim is based on the factually flawed premise that Griffin did not want to speak to Detective Kane on October 30, 2020. Despite Griffin's testimony, the record reflects that Griffin voluntarily came forward and asked to speak to Detective Kane to give information about Northpak. Although Griffin later refused to speak to investigators, Griffin was eager to talk to investigators on October 30,

2020, as Wing acknowledged during cross-examination of Detective Kane. (*See* A275-77).

Additionally, Detective Kane testified that the statement was given voluntarily after a *Miranda* waiver. (A260-64). Griffin was not someone that Detective Kane had sought to interview, having not even heard of him before Griffin asked to talk. (A264). And, the unredacted recorded statement reveals that nothing occurred during the interview that would suggest Griffin's statement was not made voluntarily.⁶³ (*See* B795). The interview lasted over an hour and did not become antagonistic, provoke an emotional reaction, or overbear Griffin's will. (*See id.*).

Nor does the record support Wing's claim that his out-of-court statement was involuntary because of "trickery" or deception by investigators. When investigators spoke to Griffin in October 2020, Griffin had recently been arrested by Pennsylvania authorities and was in custody on charges that were unrelated to this case. (A266). Although Griffin had "hoped" for a benefit regarding his Pennsylvania charges, he never entered into a cooperation agreement to obtain any benefits from Delaware. (A281-301). He also acknowledged that investigators had told him that they could not promise him anything. (A281-82). Furthermore, as the court noted, even if

⁶³ *See State v. Wright*, 2002 WL 386281, at *3 (Del. Super. Ct. Jan. 30, 2002) ("The videotaped interview enhanced Detective Ciritella's testimony and belied Mr. Garvin's claim of inducement.").

Griffin had hoped for a bail reduction when he asked to speak with Delaware investigators, that supports a finding that the statement was voluntary. (A268).

Wing also claims for the first time on appeal that the foundational requirements were not met because Griffin's statements were not truthful. (Opening Br. 32-34). Wing contends that Griffin's response, "[y]eah, I spoke on Butter. Yeah," when asked, "Did you tell the truth," "in no way was an acknowledgment that Griffin told the truth," and means that "everything else that Griffin told police was a lie." (*Id.*). Wing also contends that Griffin admitted lying in his statement to Detective Kane. (*Id.*). Wing's claims are unavailing.

First, Wing's claim is at odds with this Court's post-*Blake* and *Woodlin* decision in *Turner*,⁶⁴ which found that an "adequate foundation" was laid under section 3507 even though the declarant was *not asked* whether or not the prior statement was true. There is also no requirement that the witness affirm the truthfulness of the statement,⁶⁵ and an express denial may amount to testimony on the issue since "§ 3507 statements frequently are admitted in evidence in situations

⁶⁴ 5 A.3d at 616-17; *see State v. Bohan*, 2011 WL 6225262, at *8 (Del. Super. Ct. Nov. 23, 2011) (finding trial court did not abuse its discretion in admitting prior out-of-court statement under section 3507 where witness, who claimed not to remember substance of his statement, was not asked whether statement was truthful on direct), *aff'd*, 2012 WL 2226608, at *2 (Del. June 15, 2012) (finding prosecutor established proper foundation).

⁶⁵ *McCrary v. State*, 290 A.3d 442, 460 (Del. 2023).

where the declarant is a so-called ‘turncoat’ witness who totally disavows the prior statement.”⁶⁶ Indeed, this Court has repeatedly upheld the admission of section 3507 statements even in cases where the witness specifically recants the statements made in the prior statement.⁶⁷ There is also no requirement that the witness offer consistent trial testimony.⁶⁸

Finally, Wing’s argument fails because the prosecutor’s direct examination of Griffin and Detective Kane sufficiently laid the foundation to admit Griffin’s statement into evidence. No talismanic incantation is required to establish a proper foundation before admitting a statement under section 3507.⁶⁹ Here, the prosecutor questioned Griffin about the truthfulness of his out-of-court statement, and Griffin answered, “Yeah, I spoke on Butter. Yeah.” (A257). Wing claims that Griffin was referring to the nickname of Shareef Hamilton, whom Coffield was charged with murdering while Wing was in jail, but Griffin never testified that he was referring to

⁶⁶ *Russell v. State*, 1996 WL 539823, at *2 (Del. Sept. 18, 1996).

⁶⁷ *E.g. Flonnory*, 893 A.2d at 518; *Moore v. State*, 1995 WL 67104 (Del. Feb. 17, 1995); *Acosta v. State*, 417 A.2d 373 (Del. 1980). *Cf. Wright v. State*, 818 A.2d 950, 951 (Del. 2003).

⁶⁸ *Moore*, 1995 WL 67104, at *2; 11 *Del. C.* § 3507(b).

⁶⁹ *See State v. Stevens*, 2017 WL 4466682, at *14 (Del. Super. Ct. Oct. 6, 2017) (“By necessity there is some flexibility in the truthfulness affirmation requirement since one of the original purposes of § 3507 was to permit the introduction of prior inconsistent statements of turncoat witnesses who may disavow the truthfulness of the prior statement when questioned at trial.”), *aff’d*, 188 A.3d 810 (Del. 2018).

Hamilton. “Butter” was also the nickname of Henry’s brother, Oliver Henry (*see* B9), and, at trial, Griffin referred to Henry as “Butter’s” brother. (A294). Furthermore, Wing ignores that Detective Kane testified Griffin “said he was telling the truth in the statement he gave to me.” (A265).

To the extent Wing asserts that Griffin did not touch on the events referred to in his recorded statement because he neither testified about not remembering the statement nor refused to answer any questions (Opening Br. 30), his claim is unavailing. The record reflects that Griffin was uncooperative, giving non-responsive and argumentative responses to the prosecutor’s questions; he also claimed that he told Detective Kane that he did not want to speak to him on October 30, 2020, contrary to evidence that he was eager to speak to the detective that day and only refused to speak to him *subsequently*. (*Compare* A254-58, A280-301 *with* A260-65, A275-76). The record also establishes that Griffin refused to speak with prosecutors after giving his statement. (A282). Furthermore, as Wing concedes, portions of Griffin’s testimony were inconsistent with his prior statement. The fact that this uncooperative witness did not testify in further detail was immaterial.

Wing has not carried his burden of persuasion in demonstrating plain error. The State established a sufficient evidentiary foundation for Griffin’s out-of-court statement, and the trial judge properly exercised his discretion in admitting the

statement under section 3507. Any error in the foundation of Griffin's section 3507 statement was insubstantial and did not amount to plain error.

Even if this Court were to find that the State failed to lay the proper foundation for the admission of Griffin's statement, any error was harmless. "An error in admitting evidence may be deemed 'harmless' when the evidence exclusive of the improperly admitted evidence is sufficient to sustain a conviction."⁷⁰

Given the overwhelming evidence introduced at trial, it is highly probable that any error did not contribute to the jury's decision. The State presented overwhelming evidence that Wing shot Henry, Curtis, and Davis, and he also participated in the attempted murders of Henry, Lecompte, and Green. Jones placed Wing at the scene of each of the shootings on September 8 and 12, 2020 and saw Wing shoot Henry, Curtis, and Davis with his Beretta 9mm handgun. Wing's social media postings also showed his "beef" with MGS, Wing admitted to Pierce that he shot Henry and Davis, and Wing bragged to his brother and Lancaster that the September 8 and 12 shootings were his "wreck." And, the 9mm Beretta firearm recovered by DSP in Wing's possession, which Wing pled guilty to illegally possessing, ballistically matched the 9mm projectiles recovered from the scene of Henry's shooting and from Henry's and Lecompte's bodies, and it also matched the 9mm shell casings recovered from the scene of the Lecompte/Green shooting and

⁷⁰ *Nelson v. State*, 628 A.2d 69, 77 (Del. 1993).

from the stolen Hyundai and Altima, which Wing was arrested in and pled guilty to receiving as stolen property. Further, cell tower location plotting shows that the phone number associated with Wing was active in the area of the three September 8 shootings. In sum, there was overwhelming evidence to sustain Wing's convictions apart from Griffin's § 3507 statement.

II. THE TRIAL JUDGE PROPERLY PRECLUDED WING FROM CROSS-EXAMINING COOPERATING WITNESS TYRIE BURTON REGARDING UNCHARGED MURDERS HE COMMITTED.

Question Presented

Whether the Superior Court abused its discretion by prohibiting Wing from cross-examining cooperating witness Burton about committing any uncharged murders.

Standard and Scope of Review

This Court reviews evidentiary rulings for an abuse of discretion.⁷¹ Claims not fairly raised in the trial court are reviewed for plain error.⁷²

Merits

At trial, the State called Tyrie Burton, a former MGS member, in its case-in-chief, to testify regarding Coffield's inculpatory statements. (A180-252). Burton testified that he was currently incarcerated and was formerly a member of MGS. (A180-81, A208). Burton admitted that he pled guilty in June 2021 to conspiracy to murder in an unrelated case stemming from his involvement with MGS, and he had signed a cooperation agreement with the State to testify truthfully in this case. (A181-83, A249). Burton stated that he was sentenced to twenty years, suspended for eighteen years – the minimum mandatory sentence. (A249-50). He also

⁷¹ *Milton v. State*, 2013 WL 2721883, at *5 (Del. June 11, 2013).

⁷² *Wainwright v. State*, 504 A.2d 1096, 1099-1100 (Del. 1986).

acknowledged that his cooperation agreement included the possibility that the State would file a substantial assistance motion allowing the Superior Court to potentially reduce his sentence. (A249-50).

Burton testified that he was familiar with Northpak, knew Coffield and Wing, and was friends with Davis and Henry. (A183-88). He explained his understanding of different slang, hand gestures, and social media postings. (A188-205). He also discussed the feud between Northpak and MGS, stating that Northpak was on the offense in Wilmington toward the end of 2020. (A183-205).

Burton testified that he sent a letter to a prosecutor in his MGS case in the summer of 2021, advising that he had information about Coffield stemming from his conversation with Coffield in prison. (A205-09). Burton stated that, in August 2021, he met with that prosecutor and WPD Detective Jones. (A210-11). He said that he was not forced to speak with them and that he told them the truth about what Coffield told him the day Henry was killed. (A211-12). Burton also testified that Coffield bragged that they had the “best stolly,” a black Nissan with tinted windows, for “drills.”⁷³ (A209-10).

The State then interrupted Burton’s testimony to call Detective Jones to testify about the statement that Burton provided in August 2021. (A212). The detective testified that Burton voluntarily spoke with him about what Coffield told him about

⁷³ “Drill” is slang for shooting at someone or shooting someone. (B743).

the day Henry was murdered and another shooting that day. (A214). The State then played, without objection, three clips from Burton's audio-recorded statement pursuant to § 3507, which had been redacted to avoid any *Bruton* issues. (A212-16; B679-81).

In his out-of-court statement, Burton told investigators that Coffield confessed his involvement in the September 8, 2020 Pine Street shooting (Henry/Davis) and the September 8, 2020 shooting of Lecompte, while they were both in prison in the summer of 2021.⁷⁴ (A210-18; B1; B2; B3). Burton stated that Coffield told him that he was inside the Nissan when he saw Davis and Henry as they walked with others near the apartment complex so they “spinned the block back on him and came back around the block.” (B1; B2). Coffield then “chas[ed] people down” and was originally shooting at Davis, but he shot or grazed “the girl” [Williams], who he thought was somebody else. (B1; B2). Coffield also told Burton that he was shooting at Henry and Davis because “they were all on Instagram” disrespecting Ray. (B2). Burton stated that Coffield told him that he shot Lecompte. (A216-17; B3).

⁷⁴ Burton testified under a plea agreement and cooperation agreement reached with the State in connection with his involvement with MGS. (A180-83, A248-50).

During cross-examination, Coffield questioned Burton about his testimony regarding MGS and Northpak keeping “score.” (A220). Coffield then asked Burton about murders he had committed:

[Coffield]: And now how many people in NorthPak have you killed?

[Burton]: I rather not answer no question like that.

[Coffield]: Why is that?

[Burton]: Because it don’t pertain to what we talking about.

[Coffield]: So you have killed some people in Northpak?

[Burton]: I’m not saying if I did or I didn’t.

[Coffield]: The score that you talk about that you keep, how many people has MGS killed in the NorthPak group?

[Burton]: I don’t know.

[Coffield]: Well, you told ... the attorney that you keep score?

[Burton]: Like I said, I’m not a member of MGS anymore, so I don’t know what the score is.

[Coffield]: Well, going back to before you went to jail, how many people in NorthPak did MGS kill?

...

[Burton]: I don’t know.

...

[Coffield]: So even though you were keeping score, you don’t know?

[Burton]: Yeah, I don’t know.

[Coffield]: Don't you think killing people would be something important to remember?

[Burton]: Not if you didn't do it.

...

[Coffield]: The [members of MGS] that have been indicated are the ones that are killing people in NorthPak?

[Burton]: No.

...

[Coffield]: Now, these gangs that I just mentioned [MAG, STK, Murder 13, 40B gang], have there been shootings involved between MGS and these other groups?

[Burton]: Yes

[Coffield]: Has MGS also killed members of these other gangs?

[Burton]: Some of them.

...

[Coffield]: Have you killed any members of these other gangs?

(A220-24). The State objected to Coffield's line of questioning regarding his involvement in any uncharged murders that he committed as a member of MGS, and the following exchange took place at sidebar:

[Prosecutor]: [T]he State would object to this line of questioning.

[Coffield] can get into the charges that [Burton] was charged with as it pertains to the MGS investigation and what was dropped and the deal

he got, but asking him about murders he has committed is getting into his Fifth Amendment Right and uncharged misconduct.

[Coffield]: [T]hey have talked about keeping score and going back and forth. And I can ask the details of the score and the murders for these crimes and I can ask the details of the murders.

[Prosecutor]: And [Coffield] has gotten into the general back and forth between MGS and Northpak, their enemies and ... I believe he's gotten out already that there have been shootings on both sides of the gang war that the different sides are [responsible] for. But other murders that have been uncharged, that is kind of dangerous territory and is not admissible.

(A224-25).

Wing then interjected, stating that “[i]n [Burton’s] statement he’s asked or he says he was not involved in any murders. So that’s why I believe this line of questioning is relevant because he lies in his statement to the police.” (A225). The court then asked Coffield for his “explanation of why [he was] offering this or asking about this,” and Coffield responded that “it’s to impeachment because it’s different from what he told the police in his [§ 3507] statement.” (A225-26).

The court then asked about “what is different than what he told the police,” and Coffield said, “[H]e said he didn’t murder anybody or kill anybody, [and] this is different from what he said.” (A226). The court responded that Burton “didn’t answer that question,” and Coffield replied that “it also shows his motive.” (*Id.*). The court stated that it believed that Burton was not going to answer if he killed anybody, and Coffield acknowledged that Burton could do that. (A226-27). The

court then stated, “And I think he’s told you that [he is not going to answer];” Coffield replied, “I’m stuck with it,” and the court agreed. (A227).

On appeal, Wing claims that the court abused its discretion when it sustained the State’s objection to the line of questioning regarding Burton’s involvement in any uncharged murders. (Opening Br. 35-41). Specifically, he argues that cross-examination on Burton’s “knowledge and involvement in his own murders” should have been allowed under Delaware Rules of Evidence (“D.R.E.”) 607 and 616 to show bias. (*Id.*). Wing’s claims are unavailing.

Wing did not raise this argument below, and this Court should not consider it on appeal.⁷⁵ Nor should the Court consider Wing’s assertion of error based on D.R.E. 607⁷⁶ and 616⁷⁷ under the plain error standard of review, as it does not amount to a material defect, apparent on the face of the record, which is basic, serious, and fundamental in its character, and which clearly deprived him of a substantial right, or which clearly shows manifest injustice.⁷⁸ “Under the plain error standard of

⁷⁵ See Supr. Ct. R. 8; *Wainwright*, 504 A.2d at 1100; *Russell v. State*, 5 A.3d 622, 627 (Del. 2010) (noting that prohibition against considering on appeal claims not raised in trial court “applies to both specific objections as well as the arguments that support those objections”).

⁷⁶ D.R.E. 607 provides “[a]ny party, including the party that called the witness, may attack the witness’s credibility.”

⁷⁷ D.R.E. 616 provides “[a] witness’s credibility may be attacked with evidence of the witness’s bias, prejudice or interest for or against any party to the case.”

⁷⁸ See *Wainwright*, 504 A.2d at 1100.

review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”⁷⁹ “Stated otherwise, the error must have affected the outcome of the trial.”⁸⁰

In support of his claim that the court erred by precluding the defense from questioning Burton about uncharged crimes, Wing argues: (1) Burton’s testimony was crucial to the State’s case because he provided information explaining Wing’s motivation and intent behind the crimes with which he was charged and testified regarding the term “score”; (2) Burton was clearly biased against Wing because of his cooperation agreement and his relationship with the victims; and (3) there was no danger of unfair prejudice, confusion of issues, or any undue delay. (Opening Br. 36-41). Wing’s claims are unavailing.

First, Burton’s testimony was not crucial to the State’s case against Wing. Burton’s out-of-court statement was redacted to eliminate any reference or implication of Wing by Coffield to avoid any *Bruton* issues. (B679-81). And, as discussed, there was overwhelming evidence presented at trial against Wing, including Jones’s eyewitness testimony demonstrating Wing’s involvement in the murders and attempted murders, and Wing’s inculpatory statements that Davis and Henry were his “wrecks.”

⁷⁹ *Id.*

⁸⁰ *Morales v. State*, 133 A.3d 527, 532 (Del. 2016) (citations omitted).

Furthermore, while the two shootings that Burton claimed that Coffield admitted to committing were also predicate acts for the gang participation charge, there was independent, significant evidence against Coffield for those crimes, including Jones' testimony. The jury also found the existence of thirteen additional predicate offenses for the gang participation charge. (B789-93).

Finally, while Burton testified regarding Northpak's motivations, its feud with MSG, and his understanding of gang terms, his testimony on these issues was not crucial as other witnesses, including Detectives Kane and Jones, Investigator Masi, Jones, and Pierce, provided similar testimony. (*See, e.g.*, A94-95, A272; B26-146, B148, B500-01, B629, B722-23, B726-27, B731-32, B733, B742-45, B748-49, B768-71, B784; B7).

The jury was also aware that Burton was biased against Wing and Coffield. Although Wing claims that they were not able to "fully and effectively cross examine [Burton] about the facts of his open case for conspiracy to commit murder" (Opening Br. 39-40), he is mistaken. Burton had already pled guilty to conspiracy and was sentenced before testifying at trial. Although Burton refused to answer whether he had committed any uncharged murders, the record reflects that defense counsel thoroughly cross-examined Burton, including about the conspiracy charge he pled guilty in his plea agreement, his previous lie to police in that case, his cooperation agreement, his hope regarding future benefits he would receive, the animosity

between Northpak and MGS, and shootings committed by both gangs. (A218-52). Therefore, the defense had the opportunity to – and did – present evidence allowing the jury to assess Burton’s general credibility and any bias, motive, and incentive to be untruthful in this case.

Finally, given the limited relevance of whether Burton committed any uncharged murders in other cases, its probative value was also substantially outweighed by the danger of confusion of the issues, misleading the jury, or waste of time. Such questioning would have risked distorting the focus of the case by exposing the jury to tangential misconduct evidence.

Accordingly, had Wing raised the bias argument in the trial court, the court would have acted well within its discretion in excluding reference to any uncharged murders. Wing cannot show plain error. Any error was harmless given the overwhelming evidence against Wing.

CONCLUSION

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

/s/Carolyn S. Hake (No. 3839)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 N. French Street
Wilmington, DE 19801
(302) 577-8500

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY WING,)
)
 Defendant-Below,) No. 320, 2023
 Appellant)
)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee)

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

s/ Carolyn S. Hake
Carolyn S. Hake (I.D. No. 3839)
Deputy Attorney General

DATE: February 22, 2024