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Case Number 321,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAKIIM STRICKLAND,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 321, 2023
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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DATED: April 26, 2024

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I. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO, *SUA SPONTE*, ISSUE AN INSTRUCTION LIMITING THE JURY'S CONSIDERATION OF "SHOOTING EVIDENCE" TO THE EXPLICIT PURPOSE OF ESTABLISHING IDENTIFICATION AND POSSESSION AS THAT FAILURE WAS CLEARLY PREJUDICIAL TO STRICKLAND'S SUBSTANTIAL RIGHTS AND JEOPARDIZED THE FAIRNESS AND INTEGRITY OF THE TRIAL PROCESS.

It is confounding how the State reaches the conclusion that a trial consisting mainly of evidence of uncharged misconduct- i.e. , firing a weapon indiscriminately throughout the neighborhood, firing directly at one individual, and fleeing from the scene of a shooting- is a trial containing no mention (other than stipulated "person prohibited" offenses) of "other crimes or bad acts." [1]

In his Opening Brief, Strickland is clear that his appeal is from the trial court's failure to issue a limiting instruction for purposes of the jury's consideration of the "shooting evidence" presented to the jury to establish identification and possession. His argument is not targeted at the prior offenses to which he stipulated for the "person prohibited" elements of the offenses charged. Rather, he explains that "the bulk of the trial for crimes of possession focused on the issue of whether a shooting is depicted in the video

[1] State's Ans. Br. at pp. 11-13.

and, if so, whether Strickland was the one who did the shooting."[2] Throughout his brief, including within the title of his argument, Strickland refers to the evidence of prior/other misconduct as "the shooting evidence" at least 15 times. Further, in its Answering Brief, that State acknowledges, by quoting Strickland's brief, that the "shooting evidence" is the evidence which Strickland argues lacks a required limiting instruction.[3] Yet, in its argument, the State completely ignores the shooting evidence and its requirement for a limiting instruction.

The State claims that it "did not assert at trial that Strickland committed any criminal offense(s) other than the allegations of PFBPP and PFABPP contained in the Indictment[.]"[4] In a different way, it asserts that it "did not introduce prior bad acts/other crimes evidence under D.R.E. 404(b)."[5]

The reality is that almost the entirety of the State's case is based on evidence of uncharged misconduct that is much more severe than the charged offenses. The jury was provided with evidence of an individual firing a weapon either indiscriminately throughout the neighborhood or directly at one

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[2] Op. Br. at p. 13.
[3] State's Ans. Br. at p. 12.
[4] Id.
[5] Id. at p.13.

individual then fled from police. In fact, in his opening, the prosecutor made a point of capitalizing on the danger inherent in the shooting:

> June 22nd, 2022, the defendant made a few choices that day. His first choice was to have a gun, despite being convicted a felon. His second was to have ammunition for that firearm. His third choice was to fire that gun in a neighborhood, a neighbor where families lived -- a neighborhood where families lived, men, women, elderly, young, and then to flee from police after they began to give him chase.[6]

And, during closing, the prosecutor again capitalized on the fact that police were chasing Strickland because of his possible involvement in a shooting. The prosecutor noted that after Strickland got out of the car and fled on foot, the officers,

> ***immediately concerned that they have a report of a shooting***, start looking for the person with a gun, and they start, of course, looking for the gun, too, because we're talking about a dense tree line, again, with river on the other side of it. [7]

The prosecutor's review of the evidence also revealed the magnitude of evidence of the other crimes that the State presented in an effort to obtain a conviction.[8] The magnitude of other crimes evidence can reach the level of being overly prejudicial, particularly when presented in the State's case-in-

[6] C1-2.
[7] C3-4.
[8] C5-6.

chief.[9] Thus, under circumstances in which the court finds such evidence admissible, a limiting instruction must be given.[10]

The State's assertions that it "did not introduce prior bad acts/other crimes evidence under D.R.E. 404(b) undercut by the record and by its own recitation of the record. And, the State made no attempt to address the "shooting evidence" directly in an effort to explain why it "was not prior bad acts/other crimes evidence under D.R.E. 404(b)" introduced by the State at trial. Most significantly, the State did not argue that, assuming the shooting evidence was admissible under D.R.E. 404 (b), as Strickland concedes, a limiting instruction was not required despite this Court's holding that such evidence must be restricted to its proper scope through a proper instruction to the jury.[11]

After skipping over the real issue in this case, the State fails to address the real standard with respect to the requirement of limiting instructions as it applies to the introduction of prior/other uncharged misconduct. This Court

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[9] *People v. Cardamone*, 885 N.E.2d 1159, 1186 (2008).
[10] *United States v. Peete*, 781 F. App'x 427, 438 (6th Cir. 2019) (finding defendant's participation in shooting admissible in establishing his guilt in possession of a firearm and possessing a firearm with an obliterated serial number, and noting that limiting instruction was generally acceptable means to explain that the jury may consider evidence of the shooting or assault only to determine whether defendant knowingly possessed a firearm).
[11] *Weber v. State*, 547 A.2d 948, 962–63 (Del. 1988) (citing *Getz v. State,* 538 A.2d 726, 734 (Del. 1988)).

has made clear that "due process requires that whenever evidence of other crimes is admitted, the requirements of D.R.E. 105 must be expanded to make a limiting instruction mandatory"[12] regardless of whether the instruction is requested by counsel.

Because the State has failed to provide any legal analysis or other rationale explaining why this Court should depart from its holding that, pursuant to D.R.E. 105, a limiting instruction must be given regardless of request when evidence of other misconduct is involved, this Court must reverse Strickland's convictions.

[12] *Weber*, 547 A.2d at 962–63 (citing *Getz*, 538 A.2d at 734 and Del. Const. art. I, § 7). This applies even if trial judge were to admit the "shooting evidence" as "inextricably intertwined" misconduct for the purposes of avoiding the confusion. The jury should still "be instructed as to the limited purpose for which such evidence is admitted, and that the evidence of the uncharged 'inextricably intertwined' misconduct should not be considered by it for any substantive purpose or as indicative of the defendant's character." *Pope v. State*, 632 A.2d 73, 76–77 (Del. 1993).

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT PERMITTED THE STATE TO INTRODUCE EVIDENCE OF TARON WALKER'S TWO FIREARM-RELATED FELONY CONVICTIONS THAT DID NOT INVOLVE DISHONESTY AS THE UNFAIR PREJUDICE OF THAT EVIDENCE SUBSTANTIALLY OUTWEIGHED ITS PROBATIVE VALUE.

The State's argument completely ignores the elephant in the room. The trial court appears to have incorrectly (or unclearly at best) paraphrased defense counsel's position before erroneously allowing cross examination on all three offenses. A reasonable reading of that decision is that the judge erroneously concluded that defense counsel made a partial concession that the probative value of the felonies of conspiracy to steal firearms from a federally-licensed firearms dealer and felon in possession of a firearm offenses outweighed their prejudicial effect. No such concession was made. The State fails to recognize that the trial court's misinterpretation of the party's positions amounts to abuse of discretion in rendering her decision. Further, due to the articulation of the misunderstanding as a seeming basis of the decision, at least in part, renders the lack of articulation of the balancing analysis significant.

Assuming, *arguendo*, the trial court did not base its decision on a conclusion that defense counsel conceded that the probative value of the offenses outweighed their prejudicial effect, it still abused its discretion when it allowed the introduction of all of the prior convictions. While the court was

not required to issue a lengthy analysis,[13] it was required to "make factual determinations and supply a legal rationale" [14] to support its decision that the "probative value in light of the witness' testimony does outweigh any prejudicial effect doing the balancing test, at least for two of the three offenses[.]"[15] Yet, the State fails to address the fact that no legal rationale was provided- just a pronouncement based in part on a mischaracterization of defense counsel's position.

Finally, the State's reliance on the content of the witness' testimony as a basis in determining how much "[r]emoving two other felony convictions from evidence would do [] to improve Walker's credibility," is misplaced. [16] If, as the State asserts, there are already credibility issues involved in the witness' testimony, removing other credibility obstacles would be helpful. To the degree that it would help, is for the jury to decide.

Therefore, the trial court's abuse of discretion in failing to conduct a proper balancing test was reversable error.

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[13] See *Hines v. State*, 248 A.3d 92, 101n.68 (Del. 2021) ("Although the trial court's analysis of the balancing test was brief, the court performed it as required under [DRE 609]").
[14] *Holden v. State*, 23 A.3d 843, 846 (Del. 2011).
[15] A67.
[16] State's Ans. Br. at pp. 20-21

CONCLUSION

For the reasons and upon the authorities cited herein, Strickland's convictions must be vacated.

Respectfully submitted,

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