



IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRELL REID,)
Defendant Below-)
Appellant,) No. 478, 2024
v.)
STATE OF DELAWARE,) ON APPEAL FROM
Plaintiff Below-) THE SUPERIOR COURT OF THE
Appellee.) STATE OF DELAWARE
) ID No. 2112006478A/B
)

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

OPENING BRIEF

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NATURE OF THE PROCEEDINGS

Arrest and indictment

On December 20, 2021, a grand jury approved an indictment charging Tyrell Reid in connection with the September 25, 2021 homicide of Tyaire Anderson.¹ The indictment charged Mr. Reid with:

- I. Murder First Degree
- II. Possession of a Firearm During the Commission of a Felony (PFDCAF)
- III. Assault First Degree (against W.B.)
- IV. PFDCAF
- V. Assault First Degree (against D.M.)
- VI. PFDCAF
- VII. Possession of a Firearm by a Person Prohibited (PFBPP).²

Brian Chapman, Esquire, represented Mr. Reid at trial.

Pretrial matters

At a plea rejection colloquy on May 11, 2023, the State offered a plea to Manslaughter and PFBPP, that contemplated a recommended sentencing range of between eight years (minimum mandatory) up to 15 years at Level V.³ After a colloquy, Mr. Reid rejected the plea offer.⁴ Defense counsel requested a continuance of the trial date, which the State did not oppose.⁵ Defense counsel

¹ A12-14.

² *Id.*

³ A32-33; A38.

⁴ A37-40.

⁵ A41-42.

conferred with Mr. Reid about this and acknowledged a waiver of his speedy trial rights.⁶ The trial court granted the continuance request.⁷

On May 21, 2024, the trial court held another plea rejection colloquy with Mr. Reid. The State extended two separate plea offers.⁸ The first involved a plea to Manslaughter and PFBPP, with a request for a PSI and open sentencing with a range of eight to 40 years.⁹ The second offer was a plea to Manslaughter, Assault First Degree, and PFBPP, with a request for a PSI and the State would recommend a sentence between 10 years up to 20 years of unsuspended Level V time.¹⁰ After a colloquy with the Court, Mr. Reid rejected both plea offers.¹¹

The State noted it did not oppose severing the PFBPP offense.¹²

Trial

Jury selection took place on May 30, 2024.¹³ Mr. Reid's case proceeded to a five-day jury trial beginning on June 3, 2025. Mr. Reid elected not to testify in his defense.¹⁴ On June 10, 2024, the jury returned a verdict of guilty on all counts.¹⁵

⁶ A42.

⁷ *Id.*

⁸ A48.

⁹ A48-49.

¹⁰ A49.

¹¹ A50-53.

¹² A60.

¹³ A68-97.

¹⁴ A702-706.

¹⁵ A843-844.

Mr. Reid waived his right to a jury trial on the “B” case and decided to have a bench trial.¹⁶ After hearing brief additional testimony, the trial judge found Mr. Reid guilty of PFBPP.¹⁷

Sentencing and appeal

On October 25, 2024, the Court sentenced Mr. Reid to life imprisonment for the murder charge plus an additional 36 years of unsuspended Level V time on the balance of the charges.¹⁸ As to two violations of probation, the Court discharged the probations.¹⁹

Through counsel, Mr. Reid filed a timely notice of appeal. This is Mr. Reid’s Opening Brief.

¹⁶ A845-847.

¹⁷ A852.

¹⁸ A902; Exhibit A.

¹⁹ *Id.*

SUMMARY OF ARGUMENT

I. THE TRIAL JUDGE ABUSED ITS DISCRETION IN PERMITTING THE STATE TO INTRODUCE HEARSAY TESTIMONY THROUGH DETECTIVE JONES REGARDING TAHESHA BROWN'S PRIOR STATEMENT TO POLICE THAT SHE PREVIOUSLY OBSERVED MR. REID WITH A FIREARM.

The State called Tahesha Brown, the mother of eight of Mr. Reid's children, to testify as a witness. During cross-examination by defense counsel, the trial court found that the defense opened the door for the State to question Brown about her prior statement to police that she saw Mr. Reid with a firearm.

During redirect, the State briefly questioned Brown about whether she previously saw Mr. Reid with a firearm and whether she told that to Detective Jones.²⁰ She denied seeing him with a gun and did not remember telling Jones that.²¹ Rather than continue to question Brown about her prior inconsistent statement or seek to introduce extrinsic evidence of this prior statement, the State moved on to other topics and concluded its questioning.

The State later recalled Detective Jones and asked him about what Brown told him in her prior statement.²² Defense counsel objected to this line of questioning on hearsay grounds, arguing that any testimony from Jones about what

²⁰ A535.

²¹ *Id.*

²² A634.

Brown said is hearsay.²³ The State argued it was not hearsay and it was being used as a prior inconsistent statement and referenced D.R.E. 613.²⁴ Over defense counsel's objection, the Superior Court permitted the State to introduce Brown's prior statement through Jones.²⁵ Jones then testified that Brown told him that she previously saw Mr. Reid with a gun on or around October 5, 2021 and she even described the type of gun that he had.²⁶ The Court did not give the jury any instruction on how it was to consider this testimony.

The trial judge's overruling of the defense's hearsay objection prejudiced Mr. Reid. There was no firearm admitted into evidence and no other witnesses that testified to Mr. Reid possessing a firearm. The trial court abused its discretion when it permitted this hearsay testimony to be introduced by the State.

II. THE TRIAL JUDGE ERRED BY FAILING TO INSTRUCT THE JURY NOT TO CONSIDER MR. REID'S CUSTODY STATUS IN ITS DELIBERATIONS AFTER THE STATE INTRODUCED EVIDENCE THAT MR. REID WAS INCARCERATED IN LIEU OF BAIL PENDING TRIAL.

The State introduced several prison calls associated with Mr. Reid at trial. Prior to introducing the calls, Detective Jones testified about how Mr. Reid was held at Howard R. Young Correctional Institute in lieu of bail and about the

²³ A634-637.

²⁴ *Id.* It appears the State was referring to Delaware Rule of Evidence 613. A636.

²⁵ A637-638.

²⁶ A638.

process of gathering prison calls associated with his SBI number. Defense counsel did not object to the introduction of these calls nor did counsel request any instructions be given to the jury about how to consider this evidence. The Superior Court did not *sua sponte* instruct the jury that they should not infer that his pretrial detention has any bearing on his guilty.

Without an instruction, the jury was free to consider this testimony for an improper purpose, such as that it had some bearing on Mr. Reid's guilt or that Mr. Reid possessed bad character. The trial judge's failure to properly instruct the jury about this testimony of Mr. Reid's custody status constituted plain error as it undermined Mr. Reid's right to a fair trial.

STATEMENT OF FACTS

This case pertains to the murder of Tyaire Anderson and shooting of two other individuals on September 25, 2021. Trial witnesses testified as follows:

Detective Jackson Rosembert

Detective Rosembert, with Wilmington Police Department, heard approximately four or five gunshots on September 25, 2021 when on direct patrol in the area of 7th and Monroe Streets.²⁷ He started traveling towards the gunshots when a tow truck driver notified him there was a shooting.²⁸ As he traveled south on Monroe Street, he observed an unresponsive person, later identified as Tyaire Anderson, suffering from multiple gunshot wounds.²⁹ He rendered aid until additional officers arrived on scene.³⁰

Rosembert described the scene as chaotic with upwards of 30 people in the area.³¹ He learned that another individual was struck by gunfire. Other officers rendered aid to that person.³² Rosembert observed a shell casing but did not collect it.³³ He also set up crime scene tape.³⁴ He canvassed the area for surveillance

²⁷ A142.

²⁸ A143.

²⁹ A144.

³⁰ A145.

³¹ A145-146.

³² A146.

³³ A147.

³⁴ *Id.*

cameras and located them at Benson’s Liquors located at the intersection of 4th and Monroe Streets.³⁵

Lieutenant Deshaun Ketler

In 2021, Ketler was watch commander and responsible for street incidents.³⁶ He went to the shooting scene on September 25, 2021.³⁷ Ketler described the call for service detail records (“CAD”) regarding this shooting.³⁸ The records reflected that the second juvenile victim suffered from a gunshot wound to the mouth.³⁹ The suspect was described as a black male wearing all black going northbound on Monroe.⁴⁰ Ketler identified a third victim that was shot in the arm.⁴¹

Master Corporal Michael Fossett

Fossett is assigned to the forensic services unit of the Wilmington Police Department.⁴² His job involves crime scene processing which includes photographing and videoing the scene, DNA collection, and fingerprint processing.⁴³ Fossett and Detective Gearhart went to the 400 block of North

³⁵ A151.

³⁶ A157.

³⁷ A158.

³⁸ A158-163.

³⁹ A162.

⁴⁰ A164.

⁴¹ A164-165.

⁴² A174.

⁴³ A174-175.

Monroe Street in regards to a shooting turned homicide investigation.⁴⁴ Gearhart created a sketch of the crime scene that including markings for items of items that were collected at the scene.⁴⁵ The items of evidence included five nine millimeter shell casings, three copper jackets, and two projectiles.⁴⁶

Fossett identified the area in the sketch that showed a large pool of blood.⁴⁷ In addition to taking pictures of the crime scene and evidence, he also took photos of the surveillance cameras in the area.⁴⁸ He also identified two items of evidence that were collected from the medical examiner's office during the examination of the victim.⁴⁹

On cross examination, Fossett explained NIBIN (National Integrated Ballistics Identification Network), although he explained that other members of WPD uploaded casings to NIBIN for comparison.⁵⁰

Stephen Deady

Deady works with the Forensic Firearms Services Unit of the Delaware State Police.⁵¹ He is a firearm and toolmark examiner.⁵² His job involves identifying

⁴⁴ A175-176.

⁴⁵ A177-178.

⁴⁶ A178-184.

⁴⁷ A185-186.

⁴⁸ A186-191.

⁴⁹ A195, 197.

⁵⁰ A200-201.

⁵¹ A206.

⁵² *Id.*

ammunition, identifying firearms and whether they are operable, and examine discharged bullets and shells to determine if they were discharged from a particular firearm.⁵³ Deady compared the five shell casings collected in this case and determined the they were discharged from the same gun.⁵⁴ Deady also determined that the other bullet specimens were discharged from the same firearm.⁵⁵ He was not able to determine whether the shell casings and the other bullet specimens came from the same gun.⁵⁶ Deady did not receive any guns for comparison.⁵⁷

David Joseph

Mr. Joseph lives in Delaware and has a son named Wayne Brooks.⁵⁸ They lived on Monroe Street in September of 2021.⁵⁹ On September 25, 2021, Joseph was smoking a cigarette on his porch.⁶⁰ He recalled seeing Tyaire Anderson that day and talking to him before he was killed.⁶¹ They were talking about a charger for an electric scooter when Joseph saw a gunshot flash and Anderson fell.⁶²

⁵³ *Id.*

⁵⁴ A213.

⁵⁵ A214; A216.

⁵⁶ A217.

⁵⁷ A217-218.

⁵⁸ A218-219.

⁵⁹ A219.

⁶⁰ A220.

⁶¹ A220-221.

⁶² A221-222.

Joseph testified that he was not looking at the shooter, but the shots continued after Anderson fell and the shooter ran off.⁶³ He described the shooter as wearing all black and a hoodie.⁶⁴

Joseph's son, Wayne Brooks, also got shot in the arm.⁶⁵ Someone called 911 and an ambulance took him to the hospital.⁶⁶ His son had a sling for several months and had to follow up with a therapist.⁶⁷ After the shooting, Wayne was scared to go outside and no longer resides in Delaware.⁶⁸

On cross-examination, Joseph confirmed that he told police he cannot identify the shooter.⁶⁹ He believed that Detective Jones showed him a six-pack photo lineup, but he couldn't pick anyone out.⁷⁰

Dereck Marshall

Back in 2021, Marshall was eight years old and on the date of the shooting he was in the area of 4th and Monroe.⁷¹ He was hanging out with his friends outside when he got shot in the left side of his upper lip.⁷² He described the

⁶³ A222-223.

⁶⁴ A223-224.

⁶⁵ A225.

⁶⁶ A225-226.

⁶⁷ A226.

⁶⁸ A227.

⁶⁹ A229.

⁷⁰ A229-230.

⁷¹ A231-232.

⁷² A232-234.

shooter as wearing a black jacket, some gloves, and “probably like a mask.”⁷³ He testified he did not see the shooter or the shooter’s face.⁷⁴ He estimated the shooter was about six to eight feet away from him.⁷⁵

Marshall did not know who the shooter was but saw him sitting on the steps around that area before.⁷⁶ Marshall spent a few days in the hospital and was unable to eat due to a fragment in his throat.⁷⁷ The doctors did not remove the fragment back in 2021 because it was too dangerous to do so.⁷⁸ Marshall testified that he was scared after the shooting and it was something with which he was still dealing.⁷⁹

Dr. Kaynan Doctor

Dr. Doctor works at Nemours Children’s Hospital in the pediatric emergency department.⁸⁰ He testified that gunshot wounds are potentially fatal.⁸¹ He treated Dereck Marshall on September 25, 2021 for a gunshot wound.⁸² There were fragments located in Marshall’s throat.⁸³ Marshall suffered a wound to the

⁷³ A235.

⁷⁴ *Id.*

⁷⁵ A235.

⁷⁶ A236-237.

⁷⁷ A237-238.

⁷⁸ A238.

⁷⁹ A239.

⁸⁰ A241.

⁸¹ A243.

⁸² A245.

⁸³ A245-246.

upper left portion of his lip and cheek.⁸⁴ He also suffered a laceration to the left side of his tongue.⁸⁵ Dr. Doctor agreed that Marshall had a scar on his upper left lip and cheek as a result of his injury.⁸⁶ The medical records also reflected that Marshall returned to the hospital on September 25, 2021 due to pain and was discharged the same day after receiving medication.⁸⁷

Jennifer Benko

Benko works at Nemours Children's Hospital in the emergency department as a physician assistant.⁸⁸ She treated Wayne Brooks on September 25, 2021 for a superficial graze or abrasion to his left upper arm.⁸⁹ She provided wound care to the injury and Brooks was discharged.⁹⁰

Detective Devon Jones – surveillance video testimony

Detective Jones, with Wilmington Police Department, was the chief investigating officer (CIO) in this case.⁹¹ He and other officers collected video surveillance from the area of the shooting. The front camera at 402 North Monroe was not operational at the time and the videos from the rear of that residence did

⁸⁴ A248.

⁸⁵ *Id.*

⁸⁶ A250.

⁸⁷ A250-251.

⁸⁸ A253.

⁸⁹ A253-254.

⁹⁰ A255.

⁹¹ A258-259.

not have anything pertinent.⁹² Police collected video surveillance from Benson Liquors at 737 West 4th Street.⁹³ The videos captured multiple angles including the areas of Monroe towards 5th Street, the corner of 4th and Monroe Streets, and the front area of the liquor store.⁹⁴ Police also recovered surveillance from the Hicks Anderson Community Center, Bites & Slice, and 713 West 4th Street.⁹⁵ Police recovered several other local surveillance videos, but they did not capture anything relevant to this investigation.⁹⁶

Police tracked the location of the person believed to be the shooter and documented these movements in demonstratives for the jury.⁹⁷ Jones created a continuous video compilation of the videos that were collected.⁹⁸ Police identified Donald Turner (aka Don Don) and Loren Adams (aka Weezy) as two people seen in the videos who appeared to converse with the shooter.⁹⁹ The videos primarily tracked one particular person identified as the shooter.¹⁰⁰ This person was

⁹² A261-262.

⁹³ A262-263.

⁹⁴ A264.

⁹⁵ A268-270.

⁹⁶ A264-266.

⁹⁷ A271-277.

⁹⁸ A277.

⁹⁹ A281-282.

¹⁰⁰ A279-286.

observed wearing all black, a Nike hooded sweatshirt, and carrying an object in his right hand.¹⁰¹

Based on the surveillance video, Jones estimated the shooter to be about five feet five inches tall.¹⁰² Jones testified that Mr. Reid's height in 2021 was listed as five foot five inches.¹⁰³ Jones also agreed that the shooter appeared to have a phone in his hand in one of the video clips.¹⁰⁴

Jones identified Mr. Reid in the courtroom and explained that he appeared larger (i.e., heavier) than he did in 2021.¹⁰⁵

Donald Turner

Back in 2021, Turner hung out in the areas of 4th Street/5th Street and Monroe Street.¹⁰⁶ He agreed that many of the same people hung out in that area that he generally knew.¹⁰⁷ Turner was familiar with Tyaire Anderson and was out on Monroe Street when he was killed.¹⁰⁸ Turner's friend Loren, who went by Weezy, was out on Monroe Street the that day and they spoke to each other.¹⁰⁹

¹⁰¹ A288.

¹⁰² A301-302.

¹⁰³ A306.

¹⁰⁴ A302.

¹⁰⁵ A307.

¹⁰⁶ A314.

¹⁰⁷ A315.

¹⁰⁸ *Id.*

¹⁰⁹ A317-319.

Turner testified that he was high on the day of the shooting.¹¹⁰ Turner did not recall many things from his interview with Detective Jones or from the day of the homicide.¹¹¹

Turner testified he was by his house at 801 when the homicide happened, but he did not see it.¹¹² After the shooting, he ran, went back to Monroe Street, and saw Anderson.¹¹³ He did not recall who was with Weezy when they were talking together.¹¹⁴ Turner acknowledged that he did not want to be at trial and didn't want to be involved in this investigation.¹¹⁵ After much back and forth with the State, the prosecutor ultimately played turner's prior statement under 11 Del. C. § 3507.¹¹⁶ The State called Detective Kirlin to introduce this statement and then recalled Turner to testify.

The State showed Turner one of the surveillance videos; he identified Anderson, Loren, and himself in the video.¹¹⁷

On cross-examination, Turner admitted to smoking marijuana regularly in September of 2021.¹¹⁸ He admitted that marijuana affects his ability to recall

¹¹⁰ A316.

¹¹¹ A319-320; A323; A324; A325; A329; A330; A331; A332; A336.

¹¹² A320.

¹¹³ A321.

¹¹⁴ A322.

¹¹⁵ A327-328.

¹¹⁶ A338-340; A342-343.

¹¹⁷ A349-351.

¹¹⁸ A355.

things and affects his perception of things.¹¹⁹ He was also taking Xanax, smoking crack cocaine, and using “dippers.”¹²⁰ He testified that Andersen sold him dippers, which is PCP, and he was known to sell drugs on that block.¹²¹

Turner spoke with Detective Jones on October 21, 2021 and he told Jones that he didn’t know the person that police believed spoke with him and Loren.¹²² He could not identify the shooter because he didn’t see the shooting on September 25th.¹²³ When he spoke with Kirlin on November 4th, Turner testified that he was scared and wanted to get out as quick as possible.¹²⁴ He said that was the person in the photograph in order to leave the police station.¹²⁵ He did know who the person was on September 25, 2021.¹²⁶ He also admitted to being high during his interviews with police, both on October 21st and November 4, 2021.¹²⁷

Detective Mackenzie Kirlin

Kirlin interviewed Tuner on November 4, 2021 in regards to this homicide investigation.¹²⁸ Through Kirlin, the State played Turner’s prior statement under §

¹¹⁹ *Id.*

¹²⁰ A355-356.

¹²¹ A356-357.

¹²² A358.

¹²³ A359.

¹²⁴ A360-361.

¹²⁵ A361.

¹²⁶ *Id.*

¹²⁷ A369-372.

¹²⁸ A341.

3507.¹²⁹ During Kirlin's interview with Turner, she showed him a photograph of Tyrell Reid, who Turner identified as Skillz.¹³⁰ Kirlin acknowledged that the purpose of this interview on November 4th was to see if Turner knew the person in the photograph.¹³¹

Detective Jones – phone numbers, addresses, and search warrant testimony

The State recalled Jones. Through this investigation, the street name Skillz was uncovered which Jones connected to Mr. Reid.¹³² Police interviewed Mr. Reid on November 4, 2021 and December 22, 2021.¹³³ The State played both interviews for the jury.¹³⁴

The State introduced a picture of Mr. Reid's arm that had the word "SKILLZ" tattooed on it.¹³⁵ Mr. Reid admitted in his first interview that he goes by Skillz.¹³⁶ Jones testified that Turner and Adams were interviewed and identified Mr. Reid as the person they spoke to in the 400 block of Monroe.¹³⁷ Defense counsel objected as to hearsay because Loren Adams had not testified.¹³⁸ The

¹²⁹ A342-343.

¹³⁰ A343-344.

¹³¹ A347.

¹³² A373-374.

¹³³ A374.

¹³⁴ A375; A388.

¹³⁵ A381.

¹³⁶ A382.

¹³⁷ A383.

¹³⁸ A383-384.

State did not oppose this request and the defense also asked for a curative instruction to disregard Jones's comment about Adams.¹³⁹ The Court instructed the jury to disregard the last statement from Jones about Adams.¹⁴⁰

Mr. Reid provided Jones with multiple phone numbers during his interview as well as multiple places where he stayed.¹⁴¹ In his November 4th statement, Mr. Reid told police he was at 417 East 2nd Street at the time of the murder.¹⁴² When Mr. Reid was taken into custody on December 22, 2021, he told Jones that he was Delaware Park at the time of the murder.¹⁴³ Jones's interviewed Mr. Reid again that same day.

Jones located multiple phone numbers associated with Mr. Reid from August of 2021 to December of 2021.¹⁴⁴ Police also seized several phones during this investigation, some of which Jones was not able to identify a phone number.¹⁴⁵ Mr. Reid also destroyed some phones during this investigation.¹⁴⁶ During his November 4th statement, Mr. Reid referenced several addresses, including 417 East 2nd Street, the Super Lodge Route 9, 683 Robinson Lane Apartment B, 122 6th

¹³⁹A384.

¹⁴⁰A384-385.

¹⁴¹A385.

¹⁴²*Id.*

¹⁴³A386-387.

¹⁴⁴A391-401.

¹⁴⁵A401.

¹⁴⁶A401-402.

Avenue, and Abbey Walk.¹⁴⁷ Jones testified that Mr. Reid also provided other addresses to law enforcement.¹⁴⁸ Police executed a search warrant at several residences, but did not locate a gun or clothing that matched the clothing in the surveillance videos.¹⁴⁹

During Mr. Reid's first interview on November 4th, he wore a pair of Balenciaga sneakers which police seized.¹⁵⁰ Over defense counsel's objection, Jones testified about the characteristics of the shoes in the surveillance video that are consistent with the Balenciaga sneakers.¹⁵¹ Jones could not definitively say that the sneakers in the video are the Balenciaga sneakers.¹⁵²

Detective Gaetan MacNamara

MacNamara works for Wilmington Police Department in the vice and organized crime unit.¹⁵³ He testified he knew Mr. Reid by the name of Skillz.¹⁵⁴ MacNamara knew Mr. Reid from multiple contacts with him as a police officer over the years.¹⁵⁵ MacNamara testified that Mr. Reid was an informant for him on

¹⁴⁷ A403-404.

¹⁴⁸ A405-408.

¹⁴⁹ A408-410; A437-439.

¹⁵⁰ A411-412.

¹⁵¹ A415-422.

¹⁵² A415.

¹⁵³ A446.

¹⁵⁴ A446-447.

¹⁵⁵ A447.

occasion.¹⁵⁶ In 2021, Mr. Reid provided MacNamara with multiple phone numbers in which to contact him at.¹⁵⁷ MacNamara agreed that in November of 2021, Mr. Reid was still communicating with him and making sure he had his phone number.¹⁵⁸

Dr. Gary Collins

Dr. Collins is the chief medical examiner with the Division of Forensic Science.¹⁵⁹ Dr. John Krolikowski performed the autopsy of Tyaire Anderson, but he retired so Dr. Collins reviewed the file to give his opinions.¹⁶⁰ Dr. Collins found that Anderson sustained gunshot wounds to the head, abdomen, and upper extremity.¹⁶¹ The cause of death was multiple gunshot wounds and the manner of death was homicide.¹⁶²

Tahesha Brown

Ms. Brown has known Mr. Reid for 20 years and they have eight children together.¹⁶³ Brown went to the Wilmington Police Department on November 3, 2021 and spoke to Detective Jones.¹⁶⁴ She testified that she didn't remember if she

¹⁵⁶ *Id.*

¹⁵⁷ A447-451.

¹⁵⁸ A453.

¹⁵⁹ A465-466.

¹⁶⁰ A469-470.

¹⁶¹ A469.

¹⁶² *Id.*

¹⁶³ A486-487.

¹⁶⁴ A487.

told the truth during her statement because she has Bipolar II, depression and anxiety, and was on “E pills and Percocets.”¹⁶⁵ Brown also spoke to Jones after Mr. Reid was taken into custody on December 22, 2021.¹⁶⁶ The State introduced her prior statements under §3507 through Jones.¹⁶⁷ During her November 3rd statement, police showed Brown still pictures and the surveillance videos.¹⁶⁸

On cross-examination, Brown testified that in November of 2021, she became aware that Mr. Reid got another woman, Desdani Leatherburry, pregnant.¹⁶⁹ Brown was very angry with Mr. Reid and wanted to hurt him.¹⁷⁰ Back in November of 2021, Brown admitted to taking “E pills” and Percocets multiple times a day;¹⁷¹ both affect her ability to remember things.¹⁷²

Brown learned that Mr. Reid was with Valerie West on September 24, 2021, which also made her angry.¹⁷³ Brown testified she changed her phone number on September 27, 2021 because she didn’t want certain people to have her number.¹⁷⁴ Mr. Reid’s phone number also changed at this time.¹⁷⁵

¹⁶⁵ A488-489.

¹⁶⁶ A489-490.

¹⁶⁷ A497-506.

¹⁶⁸ A500-505.

¹⁶⁹ A513.

¹⁷⁰ A514.

¹⁷¹ A515-516.

¹⁷² A515; A517.

¹⁷³ A519.

¹⁷⁴ A520.

¹⁷⁵ *Id.*

Brown testified that Mr. Reid would spend on average six nights at 417 East 2nd Street with her and her children.¹⁷⁶ She denied that he stayed at his mother's address at 122 6th Avenue.¹⁷⁷

Brown told the jury that when she was angry with Mr. Reid in October or November of 2021, she removed him from her family phone plan.¹⁷⁸ She would block him on her phone during these times that she was upset with him.¹⁷⁹ She testified that Mr. Reid would use a TextNow app to communicate with her, which would use a different phone number.¹⁸⁰

She elaborated that Mr. Reid was fashionable and did not wear a hood over his baseball hat.¹⁸¹ He would wear expensive clothing that were colorful, not just black.¹⁸² According to Brown, Mr. Reid did not hang out on Monroe Street.¹⁸³

When questioning Brown about when she previously spoke with police, defense asked: "Have you ever seen Tyrell walk with a firearm in his hand?"¹⁸⁴ She responded "no."¹⁸⁵ The State objected, explaining that it redacted out the

¹⁷⁶ A522.

¹⁷⁷ *Id.*

¹⁷⁸ A523-524.

¹⁷⁹ A562-527.

¹⁸⁰ A527.

¹⁸¹ A528.

¹⁸² *Id.*

¹⁸³ A527.

¹⁸⁴ A531.

¹⁸⁵ *Id.*

portions of her prior statement to police where she said she had previously seen Mr. Reid with firearms.¹⁸⁶ The State believed the parties agreed not to get into this area and now the defense opened the door.¹⁸⁷ Defense counsel responded that it was fair to question her about her mindset during her interview with police.¹⁸⁸ She did not previously state that she saw Mr. Reid walking with a firearm in his hand, which was the specific question the defense asked; counsel was focused on the walk.¹⁸⁹ The trial judge found that the door was open and the State could ask her about whether she's seen him with a gun.¹⁹⁰

On redirect, Brown denied ever seeing Mr. Reid with a gun.¹⁹¹ She did not remember telling Jones that she had seen Mr. Reid with a gun.¹⁹² She reconfirmed that she was taking ecstasy pills and Percocets every single day back in 2021.¹⁹³ She denied that Mr. Reid killed Anderson.¹⁹⁴ She admitted to lying to Jones when she spoke to him.¹⁹⁵

¹⁸⁶ *Id.*

¹⁸⁷ A531-532.

¹⁸⁸ A532.

¹⁸⁹ A533.

¹⁹⁰ A533.

¹⁹¹ A535.

¹⁹² *Id.*

¹⁹³ A536-539.

¹⁹⁴ A542.

¹⁹⁵ *Id.*

Desdani Leatherburry

Ms. Leatherburry had known Mr. Reid since about 2015/2016 and has one child with him.¹⁹⁶ She did not want to be at trial.¹⁹⁷ She spoke to police in December of 2021 and the State played her prior statement under §3507 through Detective Jones.¹⁹⁸

Valerie West

Ms. West met Mr. Reid on September 24, 2021 at Delaware Park.¹⁹⁹ They were at Delaware Park in the evening into the early morning hours of the next day.²⁰⁰ She testified she saw Mr. Reid again the following night.²⁰¹ She did not remember how Mr. Reid was dressed or whether she told Jones that he was wearing all black, tight clothing.²⁰² When they met the second time, it was at a hotel.²⁰³

¹⁹⁶ A546.

¹⁹⁷ A545.

¹⁹⁸ A547-554. The Court found that the foundational requirements were met by the State to introduce the statement. A551.

¹⁹⁹ A557-558.

²⁰⁰ A559.

²⁰¹ *Id.*

²⁰² A559-560.

²⁰³ A562.

Special Agent (“SA”) Garrett Swick

SA Swick works with the FBI in the Cellular Analysis Survey Team (CAST).²⁰⁴ As part of the CAST unit, he received specialized training in the analysis of historical cell site location records.²⁰⁵ He analyzes these records and then creates a visual representation of those records within a report.²⁰⁶ The cell phone provider in Mr. Reid’s case was T-Mobile.²⁰⁷ Swick was tasked with analyzing records for cell phone number (302) 932-6182 in this case.²⁰⁸ The State introduced Swick’s report into evidence.²⁰⁹

Swick testified that the target number did not have any activity in the area of Delaware Park Casino on September 25, 2021.²¹⁰ There was activity in the area of 417 East 2nd Street from the target number on that date.²¹¹

Swick confirmed that he was only provided with the phone records for (302) 932-6182 and was only asked to plot the data for September 25, 2021.²¹²

²⁰⁴ A572.

²⁰⁵ A572-573.

²⁰⁶ A573.

²⁰⁷ A576.

²⁰⁸ A579-580.

²⁰⁹ A580.

²¹⁰ A589-594.

²¹¹ A591-594.

²¹² A598; 607.

Officer Kristina Reimer

Reimer was Mr. Reid's probation officer, although this information was sanitized from the record before the jury. Reimer had known Mr. Reid since early March of 2021.²¹³ Reimer met with Mr. Reid in-person on a regular basis – either weekly or biweekly.²¹⁴ During these meetings, Reimer observed Mr. Reid walking, talking, sitting down, and standing up.²¹⁵

Mr. Reid provided Reimer with multiple phone numbers that changed “pretty regularly.”²¹⁶ The State went through the various phone numbers that Mr. Reid provided to Reimer during their interactions.²¹⁷ Reimer testified that Mr. Reid was also required to provide his addresses.²¹⁸ According to Reimer, Mr. Reid reported living at 417 East 2nd Street and 11 Allendale Drive, although he did not report living with Ms. Brown.²¹⁹ He did provide Abbey Walk or the Super Lodge as his addresses to Reimer.²²⁰

Reimer testified that Mr. Reid wore black “almost always” and commonly wore hats and sweatshirts or hoodies.²²¹ Reimer also described Mr. Reid as

²¹³ A608.

²¹⁴ A608-609.

²¹⁵ A609-610.

²¹⁶ A610-611.

²¹⁷ A611-614.

²¹⁸ A617.

²¹⁹ A618-619.

²²⁰ A619-620.

²²¹ A620.

wearing skinny jeans or joggers.²²² Reimer saw Mr. Reid wearing black Balenciaga sneakers.²²³

During this investigation, Reimer spoke to Detective Jones and was shown photographs to see if she recognized anyone.²²⁴ Jones asked her if she had seen Mr. Reid wearing a hoodie with a Nike Swoosh and she indicated that she had.²²⁵ Reimer also reviewed videos related to this investigation.²²⁶ In one of the videos, Reimer testified that the person in the video was consistent with Mr. Reid given the similarities in his shoes, skinny jeans, and his walk.²²⁷ She described Mr. Reid as walking with his feet outward, like a duck.²²⁸

Reimer confirmed that Mr. Reid also provided her with a phone number or address as required, even if they were different.²²⁹ When Jones met with her and showed her photographs and videos, Reimer knew that he was there to discuss Mr. Reid.²³⁰ Reimer could not say definitively that the shoes in the video were Balenciagas.²³¹

²²² *Id.*

²²³ *Id.*

²²⁴ A621.

²²⁵ A623.

²²⁶ A624.

²²⁷ A624-625.

²²⁸ A625.

²²⁹ A628-629.

²³⁰ 630-631.

²³¹ A631.

Detective Jones – Brown’s prior statement, NIBIN, and prison calls

The State recalled Detective Jones and asked him about Brown’s prior statement to police about seeing Mr. Reid with a gun previously.²³² Defense counsel objected to Jones testifying about what Brown told him as hearsay.²³³ The State argued this was being used as a prior inconsistent statement because Brown testified that she did say that.²³⁴ The State contended that it was not presenting this for hearsay.²³⁵ The defense maintained that this was hearsay because it was an out-of-court statement offered for the truth of the matter asserted and there was a question as to whether it was an exception.²³⁶ Defense counsel argued that the State needed to lay more a foundation to establish that it was a prior inconsistent statement.²³⁷

The State disagreed and believed that it was permitted to introduce this testimony under Rule 613 after Brown was given an opportunity to explain the prior statement and she did not admit to saying it.²³⁸ The defense argued it was hearsay with no exception because it was being offered for truth of the matter

²³² A634.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ A634-635.

²³⁶ A635.

²³⁷ A636.

²³⁸ A636-637.

asserted.²³⁹ The trial court overruled the objection.²⁴⁰ No instruction was given to the jury regarding the proper purpose of this testimony.²⁴¹

Jones then testified that Brown told him that she saw Mr. Reid with a black gun on or about October 5, 2021.²⁴² She also described the gun as the type “without a wheel,” which Jones knew to be a semi-automatic gun.²⁴³ According to NIBIN, the unrecovered gun used in this case was also linked to two prior incidents – one shots fired in the city and one shooting in Salem, New Jersey.²⁴⁴

Police monitored Mr. Reid’s prison communications.²⁴⁵ Jones testified that Mr. Reid was committed to Howard R. Young Correction Institute in lieu of bail after his arrest.²⁴⁶ The Court did not instruct the jury that they were not to consider Mr. Reid’s custody status for an improper purpose. The State introduced several of Mr. Reid’s phone and video calls with Leatherburry, Brown, and West.²⁴⁷ During the calls, Mr. Reid discussed several alibis, including being at 417 East 2nd Street, Delaware Park, and by a parking garage near 14th Street.²⁴⁸

²³⁹ A637.

²⁴⁰ *Id.*

²⁴¹ A638.

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ A639.

²⁴⁵ A642.

²⁴⁶ A644-645.

²⁴⁷ A650-653; A662-682.

²⁴⁸ A650-653; A662-681.

Jones testified that Loren Adams was under subpoena for trial but he was in another state and would not be appearing.²⁴⁹

On cross-examination, the defense introduced several videos that were provided to Jones from Reimer.²⁵⁰ The videos depicted Mr. Reid on several dates, including dates after Anderson's murder.²⁵¹

At the conclusion of Jones's testimony, the State rested.²⁵² After a colloquy,²⁵³ Mr. Reid elected not to testify.²⁵⁴ The defense rested.²⁵⁵ The jury found Mr. Reid guilty on all charges in the A case.²⁵⁶

The B case

Mr. Reid waived his right to a jury trial and proceeded with a bench trial on the PFBPP offense.²⁵⁷ The State called Jones to introduce records of Mr. Reid's prior felony conviction.²⁵⁸ The State rested and the defense presented no evidence.²⁵⁹ The trial judge found Mr. Reid guilty of PFBPP.²⁶⁰

²⁴⁹ A660-661.

²⁵⁰ A691-698

²⁵¹ A696-698.

²⁵² A701.

²⁵³ A703-706.

²⁵⁴ A705-706.

²⁵⁵ A707.

²⁵⁶ A843.

²⁵⁷ 845-847; A848.

²⁵⁸ A849-850.

²⁵⁹ A851.

²⁶⁰ A852.

ARGUMENT

THE TRIAL JUDGE ABUSED ITS DISCRETION IN PERMITTING THE STATE TO INTRODUCE HEARSAY TESTIMONY THROUGH DETECTIVE JONES REGARDING TAHESHA BROWN'S PRIOR STATEMENT TO POLICE THAT SHE PREVIOUSLY OBSERVED MR. REID WITH A FIREARM.

A. Question Presented

Whether the trial judge abused its discretion when it overruled the defense's objection and permitted the State to introduce hearsay evidence through Detective Jones about what Tahesha Brown told police in her prior statement about seeing Mr. Reid with a gun previously. The defense preserved this issue by objecting to the introduction of this evidence at trial.²⁶¹

B. Scope of Review

When an objection is raised at trial, this Court reviews the trial court's ruling on admitting or excluding the evidence for an abuse of discretion.²⁶² This Court reviews *de novo* "claims of constitutional violations relating to a trial court's evidentiary rulings."²⁶³

²⁶¹ A634-637.

²⁶² *Stevenson v. State*, 149 A.3d 505, 509 (Del. 2016).

²⁶³ *Id.*

C. Merits of Argument

Delaware Rule of Evidence 613 and prior inconsistent statements

Delaware Rule of Evidence 613 deals with a witness's prior statement.²⁶⁴

Rule 613(b) states:

Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).²⁶⁵

Extrinsic evidence of the witness's statement is admissible if the witness does not clearly admit or deny that he/she made the prior inconsistent statement.²⁶⁶

In *Robinson v. State*,²⁶⁷ this Court discussed the use of a prior statement for impeachment under Rule 613(b).²⁶⁸ In *Robinson*, a codefendant pled guilty and agreed to testify as a prosecution witness against Robinson.²⁶⁹ The codefendant gave a statement to police that was turned over in discovery.²⁷⁰ At trial, defense counsel sought to question the detective about what the codefendant told the

²⁶⁴ D.R.E. 613.

²⁶⁵ D.R.E. 613(b).

²⁶⁶ D.R.E. 613(c); *Adams v. Aidoo*, 2012 WL 1408878, at *17 (Del. Mar. 29, 2012).

²⁶⁷ 3 A.3d 257 (Del. 2010).

²⁶⁸ *Id.* at 262.

²⁶⁹ *Id.* at 261

²⁷⁰ *Id.*

detective in that prior statement.²⁷¹ Defense counsel argued that it contradicted what the codefendant said on the witness stand.²⁷²

The State objected and argued that the codefendant was the proper witness to examine about the inconsistencies in his statement to the detective.²⁷³ The trial court agreed with the State and ruled that defense counsel had to first question the codefendant about any alleged inconsistencies in the prior statement.²⁷⁴ Defense counsel did not recall the codefendant and the prior statement was not introduced into evidence.²⁷⁵

On direct appeal, Robinson contended that his constitutional rights were violated when the trial judge limited his cross examination.²⁷⁶ This Court reviewed the history of impeaching a witness with a prior inconsistent statement and the development of the Federal Rule of Evidence 613(b), noting Delaware's counterpart is identical.²⁷⁷ This Court found that federal court decisions interpreting F.R.E. 613(b) were persuasive authority when interpreting D.R.E. 613(b).²⁷⁸

²⁷¹ *Id.* at 261-262.

²⁷² *Id.* at 262.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.* at 258.

²⁷⁷ *Id.* at 262-264.

²⁷⁸ *Id.* at 264.

This Court agreed with the Eleventh Circuit in *Wammock v. Celotex*²⁷⁹ Corporation, which held that “Rule 613(b) does not supplant the traditional method of confronting a witness with his inconsistent statement prior to its introduction as the *preferred* method of proceeding.”²⁸⁰ This Court found that the trial court did not violate Robinson’s constitutional rights or abuse its discretion when it required his attorney “to follow the traditional sequencing procedures for impeaching a witness with a prior inconsistent statement.”²⁸¹

The issue of Rule 613 and the introduction of an out of court statement came up more recently in *Givens v. State*.²⁸² In *Givens*, the defense called Givens’s girlfriend a witness.²⁸³ She testified that Givens had not driven the car at all on the day in question.²⁸⁴ In rebuttal, the State recalled the girlfriend to question her about a prior statement she made to a DOJ investigator.²⁸⁵ Over the defense’s objection, a taped recording of her phone conversation with the investigator was

²⁷⁹ 793 F.2d 1518 (11th Cir. 1986).

²⁸⁰ *Robinson*, 3 A.3d at 264 (quoting *Wammock*, 793 F.3d at 1522) (emphasis in original).

²⁸¹ *Id.*

²⁸² 2017 WL 2465195 (Del. Jun. 6, 2017).

²⁸³ *Id.* at *2.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

played for the jury.²⁸⁶ In her previously recorded statement, the girlfriend said that Givens had driven the car earlier in the day.²⁸⁷

On direct appeal, Givens argued that the trial court erred in introducing his girlfriend's out of court statement.²⁸⁸ He contended that the statement was not admissible under 11 *Del. C.* § 3507.²⁸⁹ This Court found that the statement was not introduced under §3507; rather, it was offered under Rule 613 to impeach the girlfriend's testimony.²⁹⁰ This Court held that since the witness was provided an opportunity to explain her inconsistent statement and Givens was permitted to cross examine her about the statement, there was no error in admitting the statement into evidence.²⁹¹

The trial court abused its discretion when it allowed the State to introduce hearsay testimony regarding Brown's prior statement to police about having seen Mr. Reid with a gun previously.

During the State's redirect of Brown, it questioned her as follows about her prior statement:

Q: Okay. You ever seen the defendant with a gun?

A: No.

Q: Didn't you tell Detective Jones you did?

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* at *3.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

A: I don't remember that.

Q: Oh, you don't remember that. You remember everything else. You don't remember that?

A: No.

Q: I'll ask you point blank. Give you another chance: Have you ever seen Tyrell Reid in your 20 years with him with a gun?

A: I don't remember seeing him with no handgun.

Q: And you don't remember telling Detective Jones that?

A: No.²⁹²

After this exchange, the State did not attempt to introduce extrinsic evidence of her prior inconsistent statement to Jones about this topic while she was still on the stand.

The State sought to impeach Brown's testimony that she had not seen Mr. Reid with a gun previously. Rather than introduce her prior inconsistent statement while she was still on the stand, the State waited to introduce this testimony through Detective Jones. When Jones re-took the stand, the following exchange with the prosecutor occurred:

Q: You were present in the courtroom when Ms. Tahesha Brown testified. Is that Correct?

A: Yes.

²⁹² A535-536.

Q: She was asked questions whether or not she had discussed with you seeing the defendant previously with a firearm. Do you recall that?

A. Yes.²⁹³

Defense counsel promptly objected at this point, arguing that any comments Jones were to make about what Brown told him is hearsay.²⁹⁴ The State argued it was a prior inconsistent statement and that he was not presenting Jones for hearsay.²⁹⁵ The State referenced Rule 613 when it explained that it asked Brown three times about seeing Mr. Reid with a gun and she did not admit to saying it.²⁹⁶ The State mentioned that it was not going to play the clip because it didn't "want to draw undue attention to it."²⁹⁷ The trial court overruled the objection and permitted Jones to testify about Brown's prior statement. Jones testified that Brown told him that she observed Mr. Reid with a gun on or about October 5, 2021, which was about 10 days after the shooting at issue in this case.²⁹⁸

By introducing her prior statement through Jones, the State drew attention to it. As is demonstrated by *Robinson* and *Givens*, the proper procedure for the introduction of extrinsic evidence of a prior inconsistent statement is that it is to be

²⁹³ A634.

²⁹⁴ *Id.*

²⁹⁵ A634-635.

²⁹⁶ A636.

²⁹⁷ A637.

²⁹⁸ A638.

done through the witness who made the prior statement. Rule 613 refers to admissibility of extrinsic evidence of a particular witness's prior inconsistent statement. To introduce extrinsic evidence of a witness's prior inconsistent statement through another witness completely undermines the purpose of Rule 613. The rule is intended to permit extrinsic evidence of that witness's prior statement to operate as impeachment evidence of that particular witness.²⁹⁹

Here, the State intended to impeach Brown's testimony, not Jones's testimony. Rather than seeking to admit extrinsic evidence of her prior inconsistent statement while she was on the witness stand, the State chose to do so through Jones. The problem is that Jones's credibility is not what was at issue when this prior inconsistent statement was being introduced. Especially problematic is that the jury was not instructed regarding the proper purpose for the introduction of this testimony.

Instead, the jury heard hearsay evidence through Jones of what Brown previously told police about seeing Mr. Reid with a firearm. The jury was not instructed that the proper purpose of this testimony was to go towards the credibility of Brown. By admitting this testimony through Jones, without any limiting instruction, the Superior Court abused its discretion.

²⁹⁹ See D.R.E. 613.

The trial court's error of allowing introduction of hearsay testimony about Brown seeing Mr. Reid with a gun previously was material and prejudiced Mr. Reid as there was no other testimony about Mr. Reid having had possession of a firearm and the State failed to present any guns at trial.

The introduction of this testimony prejudiced Mr. Reid. The State never located the murder weapon; thus, no guns were introduced into evidence. There was also no other evidence that Mr. Reid possessed a gun either on the date of the shooting or on any other date. The only evidence that Mr. Reid ever had a gun came through Brown's prior statement to police that was introduced through Jones.

The State contended that the only purpose for this testimony was to impeach Brown's credibility by introducing evidence of her prior inconsistent statement. But the jury was never told that this was the only proper purpose for this testimony. Instead, the jury heard, through Detective Jones, that Brown told police that she previously saw Mr. Reid with a gun. Without a limiting instruction, the jury was free to consider this testimony as affirmative evidence that Mr. Brown previously had a gun.

This is especially problematic when reviewing the jury instructions in this case. The Superior Court gave the unsworn statements instruction.³⁰⁰ This instruction states the following:

The evidence in this case has included an unsworn statement claimed to have been made by a witness before their testimony here at trial. Under Delaware law, this type of statement is admissible regardless of

³⁰⁰ A878.

whether it is consistent or inconsistent with the witness's in-court testimony. As with any other evidence, you must decide whether an out-of-court statement is credible, or believable, and how much weight it should be given. If you conclude that there is a conflict between a witness's in-court testimony and their out-of-court statement, you may take that conflict into account when you decide the credibility and weight of the out-of-court statement. A conflict is particularly important if there is no evidence to corroborate, or confirm, the inconsistent, out-of-court statement. However, you may convict solely on the basis of such a statement if, after judging the statement's credibility and giving it the weight you believe it deserves, you find beyond a reasonable doubt that the defendant committed the crime charged.³⁰¹

This instruction is intended to address statements that are admitted pursuant to §3507. Here, the State introduced such statements for a few of its witnesses.

There was no distinction made between the §3507 prior statements and Brown's prior inconsistent statement introduced through Jones. As such, per the unsworn statements instruction, the jury was free to convict solely on the basis of the out of court statement.

At the very least, the trial judge should have instructed the jury regarding the only purpose for which they were to consider this highly prejudicial testimony. Otherwise, jurors were free to consider this out of court statement as affirmative evidence that Mr. Reid did in fact possess a firearm 10 days after this homicide and shooting. This was especially prejudicial here because no other evidence was

³⁰¹ *Id.*

introduced that Mr. Reid possessed a firearm and the State did not introduce the murder weapon into evidence.

The trial court abused its discretion when it permitted the State to introduce hearsay testimony of Brown's prior inconsistent statement through Jones. The trial court also erred by not properly instructing the jury about the proper purpose of this inconsistent statement. Because there is a reasonable probability that the outcome of Mr. Reid's trial would have been different had this evidence been excluded or had a proper instruction been given, Mr. Reid's convictions should be reversed.

II. THE TRIAL JUDGE ERRED BY FAILING TO INSTRUCT THE JURY NOT TO CONSIDER MR. REID’S CUSTODY STATUS IN ITS DELIBERATIONS AFTER THE STATE INTRODUCED EVIDENCE THAT MR. REID WAS INCARCERATED IN LIEU OF BAIL PENDING TRIAL.

A. Question Presented

Whether the trial court erred by not *sua sponte* instructing the jury to not take into consideration Mr. Reid’s custody status when reaching its verdict on the charges after the State introduced evidence that Mr. Reid was incarcerated in lieu of bail as a result of these pending charges. This issue was not preserved at trial as the defense did not request an instruction.³⁰²

B. Scope of Review

Supreme Court Rule 8 provides that this Court reviews “only questions fairly presented to the trial court;” however, this Court may consider and determine any questions not so presented “when the interests of justice so require.”³⁰³ This Court reviews issues not properly raised to the trial court if it finds “that the trial court committed plain error requiring review in the interests of justice.”³⁰⁴ Plain

³⁰² A642; A644-651.

³⁰³ Supr. Ct. R. 8.

³⁰⁴ *Hoskins v. State*, 102 A.3d 724, 728 (Del. 2014) (quoting *Banks v. State*, 93 A.3d 643, 651 (Del. 2014)).

error exists when the error was “so clearly prejudicial to [a defendant’s] substantial rights as to jeopardize the very fairness and integrity of the trial process.”³⁰⁵

C. Merits of Argument

Admissibility of prison calls

In *Harris v. State*,³⁰⁶ Harris objected to the admission of prison call recordings, in part, due to the highly prejudicial nature of the fact that he was incarcerated at the time.³⁰⁷ The trial court admitted the phone calls over the defense’s objection, but ordered that the parties remove any reference to the company that handles the prison recordings.³⁰⁸ Additionally, the trial court advised that a limiting instruction would be given “regarding the jury’s use of the prison call recording.”³⁰⁹

At trial, Harris stipulated that he was in a detention center and the Court instructed the jury not to draw any inference “that because of this incarceration, the defendant is a bad person, disreputable or that he is somehow more likely to have committed the crimes for which he has been accused.”³¹⁰ Significantly in *Harris*,

³⁰⁵ *Bullock v. State*, 775 A.2d 1043, 1047 (Del. 2001) (quoting *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)).

³⁰⁶ 301 A.3d 1175 (Del. 2023).

³⁰⁷ *Id.* at 1178.

³⁰⁸ *Id.*

³⁰⁹ *Id.* at 1178-1179.

³¹⁰ *Id.* at 1179.

the defendant was also charged with Aggravated Act of Intimidation and Breach of Conditions of Bond During Commitment.³¹¹

On appeal, Harris argued that the trial court abused its discretion in admitting the prison calls because the probative value of the calls did not outweigh the highly prejudicial nature of the calls.³¹² As part of this argument, he contended that prison calls were “unduly prejudicial because they made the jury aware that Harris was previously incarcerated, undermining the constitutionally guaranteed presumption of Harris’s innocence, and potentially allowing the jury to convict him on an improper basis.”³¹³ This Court analyzed Harris’s claim under Delaware Rule of Evidence 403 which provides that court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”³¹⁴

When this Court reviewed the danger of unfair prejudice in the *Harris* case, it found that the argument lacked merit because the jury was already made aware that the defendant was incarcerated at some point in time because he was charged with Breach of Conditions of Bond During Commitment and he stipulated he was

³¹¹ *Id.*

³¹² *Id.* at 1180.

³¹³ *Id.*

³¹⁴ *Id.* at 1181; D.R.E. 403.

incarcerated at the time.³¹⁵ Additionally, this Court noted that the “trial judge properly instructed the jury to disregard any improper inference from the fact that Harris was incarcerated during the relevant time period.”³¹⁶

The trial court erred when it failed to properly instruct the jury to disregard any improper inference from the fact that Mr. Reid was incarcerated.

The jury in Mr. Reid’s case heard testimony from Jones about the fact that Mr. Reid was incarcerated during this case. It was not merely one passing comment that Mr. Reid was in custody; rather, Jones testified that Mr. Reid was committed to Howard R. Young Correctional Institute in lieu of bail.³¹⁷

Jones also explained that inmates make three-way calls which are prohibited by DOC, discussed SBI numbers for inmates, testified that inmates use each other’s SBI numbers to make calls which is prohibited, and referenced that he requested the calls associated with Mr. Reid’s SBI number.³¹⁸ The calls that were played ultimately included the automated message at the beginning of DOC calls that tells the listener the call is from Howard R. Young Correctional Facility.³¹⁹

Defense counsel did not object to the introduction of this testimony about Mr. Reid’s incarceration status or request a curative instruction. The Superior

³¹⁵ *Harris*, 301 A.3d at 1185.

³¹⁶ *Id.*

³¹⁷ A644-645.

³¹⁸ A645-648.

³¹⁹ A651.

Court erred by not *sua sponte* giving an instruction to the jury that it was to disregard any improper inference from the fact that Mr. Reid was incarcerated during this time period.³²⁰ Specifically, the jury should have been instructed to not draw any inferences from the fact that Mr. Reid was incarcerated and that it does not mean he is a bad person or somehow more likely to have committed the crimes for which he is charged.

Yet, no such instruction was given. The jury was left with Jones's extremely prejudicial testimony about Mr. Reid's custody status during this case. Without a proper limiting instruction, there is no way to know that the jury did not consider this evidence for an improper purpose that undermined his constitutional right to be presumed innocent.

The trial court's failure to properly instruct the jury on how to properly consider the evidence of Mr. Reid's custody status prejudiced him and undermined his right to a fair trial.

When the jury heard that Mr. Reid was incarcerated in lieu of bail at the time the calls were made, it undermined his right to a fair trial. The jury could have believed that because Mr. Reid was in custody, he was guilty, or that he was

³²⁰ See *Harris*, 301 A.3d at 1185; *Bartell v. State*, 2018 WL 1565636, at *2 (Del. Mar. 29, 2018) (noting that defendant's concern that jury could misuse knowledge of his pretrial detention was valid one, but trial court met this concern by instructing jury on two occasions that "they should not infer that pretrial detention had any bearing on his guilt").

dangerous. The jurors could have decided this case based on one of those reasons, which would be improper.

Unlike in *Harris*, there was no other evidence introduced that Mr. Reid was incarcerated. The defendant in *Harris* was charged with Breach of Conditions of bond During Commitment, which requires an element that he be in custody. Mr. Reid was not charged with any offenses that required an element that he was in custody.

The testimony surrounding the prison calls was the only evidence presented that he was in custody during this case. Admitting this testimony, without a proper instruction to the jury on how to consider this evidence, constituted plain error. The lack of instruction surrounding this evidence was so clearly prejudicial to Mr. Reid's substantial rights as to jeopardize the fairness and integrity of the trial process.³²¹

This Court should reverse and remand for a new trial.

³²¹ *Bullock*, 775 A.2d at 1047 (Del. 2001).

CONCLUSION

For the foregoing reasons, Appellant Tyrell Reid respectfully requests that this Court reverse the judgement of the Superior Court and remand for a new trial.

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