



IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER RIVERS,)
)
Defendant-Below,)
Appellant)
)
v.) No. 536, 2016
)
STATE OF DELAWARE,)
)
Plaintiff-Below,)
Appellee)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

The Appellant, Christopher Rivers (“Rivers”), was arrested on September 3, 2014 for the murders of Joe and Olga Connell. (A1 at DI 1). Thereafter, on September 15, 2014, Rivers, with one of his co-defendants, Dominique Benson (“Benson”), was charged by indictment with two counts of Murder First Degree, two counts of Possession of a Firearm During the Commission of a Felony (“PFDCF”), and Conspiracy First Degree. (A1 at DI 2, A23-25). Rivers was also charged by indictment with Criminal Solicitation First Degree. (A25).

On March 4, 2015, Rivers filed a motion to sever defendants, which the Superior Court denied in June 2015. (A5 at DI 24, A6 at DI 33). On August 31, 2015, Rivers filed a motion for transfer of venue. (A10 at DI 44). The State responded (A11 at DI 47), and, on December 22, 2015, the Superior Court denied the motion without prejudice. (A11-12 at DI 53).

On February 26, 2016, the police arrested another co-defendant, Aaron Thompson (“Thompson”). (A13 at DI 62). On February 29, 2016, the State re-indicted the case to include all three defendants. (A13 at DI 62-63, A26-28). However, because Rivers and Benson’s trial was scheduled to begin on April 5, 2016, the State did not oppose the severance of Thompson’s case from that of his co-defendants. (A13 at 62).

On March 28, 2016, the Superior Court held a pre-trial office conference. (A203-08). The parties discussed the State's intent to introduce evidence of both a previous failed murder attempt and several co-conspirators' statements made after the murders. (A205-08). The court requested a formal motion by the State and briefing by both parties. (A206). On April 1, 2016, the State filed a motion *in limine* to admit the co-defendants' statements made subsequent to the murder, as well as evidence of the failed murder attempt. (A15 at DI 72, A209-368). The defense responded on April 5, 2016 (A15 at DI 75, A369-685), and the State replied on April 7, 2016. (A16 at DI 77, A686-697). Jury selection took place on April 5 and 8, 2016. (A15 at DI 73). Before opening statements, on April 8, 2017, the Superior Court granted the State's motion *in limine* (A15 at DI 73), and, on April 27, 2016, the Superior Court formalized its ruling in a written decision. (A698-702).

A jury trial took place from April 11, 2017 through April 27, 2017. (A18 at DI 89, 90). On April 29, 2017, the jury found Rivers guilty on all indicted counts. (A2305-6). The jury found Benson guilty of Conspiracy First Degree and were hung on the remaining counts.¹ Following a presentence investigation, the Superior Court sentenced Rivers on October 7,

¹ Benson is pending retrial on the Murder First Degree and PFDCF charges.

2016 to two natural life sentences plus 50 years at Level V. (A731-34).

Rivers has appealed his conviction and has filed an opening brief and appendix in support of his appeal. This is the State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. DENIED. The trial court did not abuse its discretion in denying Rivers' pretrial motion for change of venue. The trial court appropriately denied Rivers' motion without prejudice because Rivers failed to show a reasonable probability of so great a prejudice that he could not obtain a fair and impartial trial in New Castle County. The *voir dire* process did not establish that the jury pool was prejudiced. Rivers fails to provide evidence of prejudice, made no objections after jury selection, and a jury of New Castle County residents was properly empaneled.

II. DENIED. The trial court did not abuse its discretion in admitting co-conspirators' statements made after the murders under the co-conspirator exception to the hearsay rule. The Superior Court appropriately found unavailing Rivers' argument that the conspiracy ended when the Connells were murdered. Rather, the trial court reviewed the "fact-specific scope of the original agreement," and determined that receiving the agreed-upon payment was a "primary objective" of the co-defendants' original plan, as they had no other motive for committing the murders. Thus, statements made after the murders in order to procure payment were admissible under DRE 801(d)(1)(E).

STATEMENT OF FACTS

In 2006 and 2007, Rivers, with different partners, operated C&S Auto, a two-bay garage rented from the Oceanic (“Oceanic”) gas station located at 3201 Concord Pike in North Wilmington. (A1140-43, A1153-55). Joe Connell (“Joe”) first began working for Rivers at C&S when it was located at the Oceanic. (A1008-09, A1154, A1590). Olga Connell (“Olga”) was the receptionist. (A1011). Eventually, for a payment of \$20,000, Joe became Rivers’ partner. (A2022, A2031). In 2012, Rivers and Joe formed a new partnership, C&S Automotive Repair (“C&S” or “the shop”), at a new location at 3805 Concord Pike, North Wilmington. (A1044, A1592, A2022). Olga was still their receptionist. (A1433, A1592).

After Joe and Olga married in June of 2013, Rivers grew increasingly disgruntled being Joe’s business partner. (A1046). Rivers complained to people that Joe was extravagant, did not work enough, and was spending the company’s money on himself. (A1046-48, A1593, A1643-44, A1716-17, A1801, A2037). Rivers also complained that Joe was using and selling steroids. (A1596, A1649, A1720, A2037). Rivers himself used cocaine and pills, buying them at the shop or other locations. (A1650). Rivers talked about wanting to buy Joe out, saying it would cost him \$25,000. (A1157, 1598).

On July 30, 2013, Officer Kelly Richards of the New Castle County Police Department (NCCPD) responded to a call that the Connells residence at 84 Paladin Drive, Paladin Club Apartments, had been burglarized. (A926, 934). Someone had pried the Connells front door open and stolen approximately \$21,000 worth of items. (A934-35). The police had little evidence with which to pursue a suspect. (A2237).

On the evening of September 21, 2013, the Connells and some friends went out to celebrate Olga's birthday at Firestones on the Wilmington Riverfront. (A1019, 1035, 1038). Rivers was supposed to join them, but never made an appearance. (A1039). Instead, Rivers texted Joe throughout the night, wavering as to whether he was joining them or not, and continually asking Joe where he was and what time he would be leaving. (A1020-21, 1039). The Connells' friends left the restaurant around 12:00 a.m. (A1040), but the Connells stayed longer. (A1024).

At approximately 1:28 a.m., on September 22, 2013, NCCPD officers responded to a call of "shots fired with a female bleeding in front of" 84 Paladin Drive. (A923-24, A929, A2083). When Officer Richards arrived, she saw paramedics treating Olga,² who was lying on the sidewalk with a

² Officer Richards recognized Olga from the burglary investigation at the Connells' residence two months earlier. (A925-26).

gunshot wound to her cheek, and a pool of blood under her head. (A924-26, A1237-38). Olga's purse and iPhone were near her body, her keys were in the building's front door-lock, and the couple's mail was scattered near her. (A931-3, A978, A986, A1292-93, A1425-26). Bullets had shattered the glass in the front doorway and the front door lights of the condominium. (A926, 932-33, 980). Olga, who was alive at the scene, died after the paramedics transported her to the hospital. (A925, A1224).

The police found Joe's dead body face down in the shrubs to the left of the front entrance of 84 Paladin Drive. (A927-30, 981, 986). Joe's head was bleeding; he had his iPhone in his right hand and still had his wallet. (A930, A1287, A1294-95). Because it had been raining heavily that night, the police covered pieces of evidence with plastic to preserve the scene. (A1217, A1225, A1415).

The police found live 9mm rounds in the parking lot and one live round next to Joe's body. (A926, 931, 1127). In addition to other ballistic evidence scattered throughout the scene, the police also recovered five 9mm casings near Joe's body and eight .22 caliber casings closer to Olga's body. (A1129-30, 1133).

At around 6:00 a.m. on September 22, 2013, NCCPD Detectives James Leonard and Justin Breslin went to Rivers' residence at 1228 Faun

Road in North Wilmington, where he lived with his girlfriend, Lauren Gorman and their son. (A1585-86; A1433-36). When Rivers answered the door, the detectives asked if he was Joe's business partner and he responded, "What did he do now?" (A1436-37). While on his front step, Rivers told the police that Joe had been selling steroids at the shop. (A1437). When the police interviewed him at the station later that day, Rivers said that, in addition to Joe's steroid involvement, Joe had been feuding with his sister over a family ring, and he had a \$100,000 Mercedes. (A1466-71, 1481). Rivers also claimed that C&S had been burglarized on the same day in July that the Connells had been burglarized. (A1483-85). The police found no evidence of anyone reporting the C&S burglary. (A2237).

The medical examiner completed Joe's autopsy on September 22, 2013, and completed Olga's autopsy the following day. (A1092-95, A1101). The medical examiner found one projectile on the examining table near Joe's head and three others, one each in the skull, knee and upper chest. (A1097-A1100, 1392-95, A1399). The medical examiner removed projectile fragments from Olga's brain. (A1098, A1379-80). The medical examiner determined that both Joe and Olga's manner of death was homicide. Olga's cause of death was "gunshot wounds to [the] head and face." (A1402). Olga had one gunshot wound to her cheek, one to the back

of her head and one to her shoulder. (A1370-77). The medical examiner determined that Joe's cause of death was multiple gunshot wounds. (A1402). Joe suffered four gunshots to his neck, which exited his skull, cheek, mouth and neck, and numerous gunshots to the rest of his body. (A1382-83, A1387-98). Joe also suffered several lacerations from blunt impact. (A1385-86). The medical examiner opined that Olga was shot from an indeterminate range, "anywhere beyond 2-1/2 to 3-feet," and also stated that it did not appear that any of the shots fired at the couple were from a close range. (A1367, A1406-07).

On September 22, 2013, the police, with Rivers' consent, executed various search warrants. (A1102-03, A1237-38, A1285, A1297-98). Rivers showed the police where Joe kept his steroids in a drop ceiling at C&S. (A1468-71, A1488-90). Because Rivers and Gorman had installed a six-camera continuously activated surveillance system at their home, police collected the home's surveillance video. (A1297-99, A1602-04; A2112, A1463). The police also took Rivers' cell phone. (A1464). Rivers then began using Gorman's cell phone. (A1605).

During the search of the Connells residence, the police found an insurance policy for Joe, with Rivers as the named beneficiary. (A1478-79). Detective Leonard thereafter learned that on October 10, 2012, Life

Insurance Company of the Southwest issued Joe a \$977,500 life insurance policy, with Rivers as the beneficiary. (A2015-16). To secure a mortgage loan, Susquehanna Bank required both Joe and Rivers to purchase identical “key person” life insurance policies with each other as beneficiaries. (A2015-20). If one of the insureds died, the mortgage loan would be paid off prior to the beneficiary receiving any money. (A2015-20). These policies were in effect when the Connells were murdered. (A2016).

Rivers had three outstanding civil judgments against him, all predating his partnership with Joe. (A1471-1477). Rivers had two separate judgments, one for \$15,000, and another for \$114,838.88, against him and his prior business at the Oceanic. (A1477-78, A1494). DEXTA Federal Credit Union had a \$27,972.92 judgment against Rivers for a boat. (A1478). Also, Rivers’ father and grandmother had loaned Rivers money several times, the total amounting to between \$250,000 and \$300,000. (A2037-39). Rivers spent these loans immediately. (A2141). On September 17, 2013, Rivers’ mother gave Rivers \$26,000 to buy Joe out of C&S. (A2038). This loan raised Rivers’ personal account from \$76 to \$26,076. (A2141). By September 19, Rivers had written two checks to cash totaling \$10,000 and transferred \$11,000 to his joint account with Gorman. (A2142). He then made other personal withdrawals and deposited only a small amount into the

business account. (A2142).

The police also learned that during the summer of 2013, C&S business checks for supplies were bouncing. (A2139, A2143). In September 2013, the mortgage check bounced for the first time. (A2140). Both Rivers and Joe had ATM cards associated with their C&S business account. Between December 2012 and September 2013, Rivers had withdrawn approximately \$19,000 using the ATM card, while Joe had withdrawn \$6,000. (A2140-41).

Delaware State Police Firearms Examiner Carl Rone examined 18 cartridge cases from the murder scene and determined that six of the 9mm cartridge cases were fired from the same firearm.³ (A1514, 1524-27). Based upon insufficient markings, Rone was not able to conclusively determine whether the 12 remaining .22 cartridge cases were fired from the same weapon. (A1531-33). Because they were too damaged, Rone could also not make any determinations as to two 9mm copper-jacketed projectiles, nine .22 washed lead projectiles, or the projectile fragments.

³ NCCPD received a report from an unidentified person that before the murders, a firearm had been stolen from the person's home and then had been left back at the home the day after the murders. (A1482). The police had the firearm, a Taurus 9mm pistol, examined; Rone determined that the firearm was not the firearm that fired the six cartridge cases. (A1483, A1529-30).

(A1533-38, A1541-42). Rone determined that the six live bullets from the scene came from different brands of 9mm cartridges, but all could have been fired from the same weapon. (A1526-27; A1538-41).

The police obtained call detail records for Rivers and the Connells. (A1926-30; A1937-48). Detective Leonard noted that around the time of the murder, there was a series of deleted texts or calls on Rivers' phone to and from Joe's cell phone, and to and from a certain cell phone number associated with an individual named Joshua Bey ("Bey"). (A1945-46; A2064-65). On October 4, 2013, Detective Leonard brought Bey to the police station to ask about the deleted texts; Bey said Rivers was his mechanic and denied any other type of relationship with him. (A2065-66). Detective Leonard then obtained more cell phone records for Bey's phone, which was in the name of his girlfriend, Alicia Prince. (A1946).

Following up on some information, police also spoke with Harry Cook, ("Cook"), who had significantly invested in C&S. (A1677-79). At the time the Connells were murdered, Cook had been at a club in Pittsburgh (A1678). On October 11, 2013, with his attorney present, police interviewed Cook. (A1681-82). He was on federal probation at the time.⁴ (A1699).

⁴ At trial, the State provided Cook with immunity for drug offenses between January 1, 2011 and December 31, 2013. (A1721-26).

Cook had been a long-time friend of Rivers and had begun working at C&S in 2013. (A1701-02, A1706-07, A1731). Cook also regularly sold Rivers Percocet pills. (A1726-28, A2022). When Rivers ran into financial problems, Cook loaned him money, eventually totaling about \$140,000. (A1713-15). Because Rivers was unable to reimburse Cook and was unhappy with Joe, he and Cook discussed Cook assuming a percentage of the partnership in C&S. (A1714-17). Rivers told Cook he could dissolve his partnership for \$25,000, but that still left Joe and Rivers as co-owners of the real estate. (A1718-20). One day, Rivers asked whether Cook thought he should kill Joe. (A1731-34). Cook was shocked and said “[Rivers] realized [] I wasn’t on board with something like that.” (A1732-34).

Cook told the police that in 2013 he noticed Bey visiting Rivers at the shop, sometimes having work done on his white Cadillac. (A1730-31). One evening when Cook’s girlfriend, Lindsey Ryan, was at C&S, she saw Rivers get in a white Cadillac with two black men, drive away for about 15 minutes and then come back. (A1811-12). In the summer of 2014, after the murders, Rivers went to Cook and Ryan’s house in the middle of the night, acting strangely. (A1809-10). Rivers flashed his car lights and beeped his horn; Cook told him to leave and not return. (A1809-10).

Rivers’ friend, William Monahan, (“Monahan”), said that Cook had

lent Rivers money and, in return, Cook told his probation officer that he had a “job” at C&S. Monahan said that Bey came to the shop regularly, starting a few months before the Connells were murdered until right before Rivers was arrested. (A2022). Bey came to the shop after 8:00 p.m. almost every day and dropped off drugs to Rivers. (A2022). Bey always came to the shop after Joe left because he and Joe did not get along after arguing over a car repair bill and because Joe did not want drugs at the shop. (A2028-29).

Rivers’ friend, Joseph Mallon, (“Mallon”), said that in the summer of 2013, when they were driving to the city to buy drugs from Bey, Rivers told him that there were a lot of financial issues and conflict between him and Joe, and he “was going to take care of it.” (A2031, A2034). Rivers told Mallon that he was going to get Bey to handle it. (A2035). On the day of the murders, Mallon asked Rivers if he had killed Joe, and Rivers responded that he had nothing to do with it, had “never talked to the people” or “[given] them any money.” (A2035-36). In August 2014, Mallon’s friend, Kelly Cancelmo, attempted, but was unable, to help Rivers with his C&S finances because Rivers had no records. (A2032-33). Cancelmo asked Rivers if “he [did] it,” meaning “murdered someone,” and Rivers said he had “met with someone, but he didn’t think they were smart enough to pull it off.” (A2053).

Detective Leonard spoke to Bey again on October 24, 2013. (A2068). This time, Bey admitted that he was Rivers' drug dealer; the police took Bey's phone and the next day, arrested him for providing a false statement to the police. (A2068; A2186; A2238). Bey's arrest resulted in a violation of his probation ("VOP"). (A2069).

Based upon their investigation, the police continued to obtain more call detail records, eventually getting records for people associated with Bey, Benson⁵ and Thompson. (A2071-72, A2133). The police learned that on the day of Bey's arrest, October 25, Benson's girlfriend, Ashley Cooper, sold her cellphone that Benson had been using. (A2134-35).

The police extracted information from all the cell phones and generated reports using the Cellebrite and Lantern programs. (A1858-1865, A1898-99, A2057). Thompson had two cell phone numbers associated with him, one in his name, and one in the name "Kenny AAA."⁶ (A2071). The "Kenny AAA" phone had been activated shortly before, and shut off shortly after, the Connells were murdered. (A2071-72).

⁵ During the relevant timeframe, Benson regularly used the cell phone belonging to his girlfriend, Ashley Cooper. (A2133).

⁶ The police tied the "Kenny AAA" phone to Thompson because that phone had several numbers in common with Thompson's named phone and both phones had several of the same contacts who were Thompson's associates or family. (A2072).

Patterns emerged when the police reviewed all of the phone records. (A2070). Rivers, Bey, Benson and Thompson exchanged texts throughout the day on September 21, 2013. (A2108). Then, starting around 8 p.m., it appeared that Rivers and Joe would exchange texts, followed by Rivers contacting Bey, followed by Bey contacting Benson. Benson then would contact Thompson. (A2070-71; A2083). A flurry of texts among Bey, Benson and Thompson started around 9:52 p.m. (A2107-08, A2119). After Bey texted Rivers at 10:41 p.m., Rivers texted Joe, asking, “where are you guys sitting, I’m on my way.” (A2107, A2119). From the phone records, it appeared that Rivers did not directly contact Benson or Thomspson, nor did Bey generally contact Thompson. (A2107-08). Rivers was the only person who directly contacted Joe. (A2107-08).

At 11:15 p.m. on September 21, Rivers texted Joe, “[] I have to go home and get my license.” (A2120). At 11:29 p.m., Benson called Thompson and then called Bey. (A2080). Next, Bey texted Rivers and then, Bey called Benson. (A2081, A2109). At 11:34 p.m., Rivers texted Joe, “You guys aren’t leaving, right, should I come back down or is it a waste of time.” (A2120). Joe and Rivers exchanged texts at 11:38 p.m., when Joe advised Rivers that he and Olga would be out for another hour. (A2081-82). Rivers then texted Bey at 11:43 p.m.; Bey called Benson at 11:44 p.m.;

Benson contacted Thompson at 11:45 p.m. (A2082, A2109-10). Rivers texted Bey at 11:52 p.m. (A2082). At 12:05 a.m. on September 22, Rivers called Bey.

All communications among Rivers, Bey, Benson and Thompson ceased between 12:05 a.m. and 2:16 a.m. on September 22, and during that time, the Connells were murdered. (A2110). Thompson's cell phone appeared to be off between 1:16 a.m. and 1:59 a.m. as his calls were routed to voicemail. (A2111-12). Cell tower records placed the "Kenny AAA" phone in the area of Paladin Club when the Connells were murdered, and thirteen minutes after the murders the phone was being used about 1 mile away from the scene. (A2217-19, A2231).

At 2:07 a.m., Bey called Benson and then Benson called Bey, with a third caller intermingled through call forwarding. (A2083; A2110). After Bey hung up with Benson at 2:16 a.m., Bey immediately called Rivers. (A2083). Benson attempted to contact Thompson at 8:00 a.m. and then multiple times after that. (A2084). At 12:08 p.m., Rivers, using Gorman's phone, contacted Bey. (A2084-85).

There were over 200 contacts between Alicia Prince, Bey's girlfriend, and Rivers, that started after Bey's October 25, 2013 arrest. (A1947-48; A1966). In these calls, Rivers told Prince that he was retaining an attorney

for Bey. (A1980-81). Prince had never spoken to Rivers before Bey's arrest. (A1982). However, they began exchanging texts about obtaining counsel for Bey. (A1982-83). At one point, Rivers informed Prince that the first attorney fell through and he would pay for another attorney. (A1983-84). Rivers and Prince met at a Wawa where Rivers gave her \$750. (A1984-85).

The police reviewed video surveillance from Rivers' house to track his movements around the time of the murders. (A1873-74). The video showed Rivers arriving home around 10:30 p.m. on September 21, 2013. (A1874-75). Rivers was home and awake throughout the night, many times on his cell phone, and did not go upstairs to his bedroom until 4:47 a.m. (A1877-79, A2067). Phone records confirm that Rivers contacted both Joe and Bey using his cell phone during that time. (A2067).

Benson and Thompson came to the New Castle County Courthouse for Bey's November 5, 2013 VOP hearing, which was rescheduled. (A2155, A2188). On August 4, 2014, the day of Bey's trial for providing a false statement, Bey confessed to the police. (A2183, A2188). Bey pled guilty to a VOP and to Conspiracy First Degree for conspiring to commit the Connells' murders. (A2161). The State agreed to recommend two years and six months at Level V for the VOP, and not to prosecute him for providing a

false statement, or for the July 2013 burglary of the Connells residence. (A2161). Bey agreed to cooperate in the Connells' murder case. (A2161). Bey's sentencing for the conspiracy charge was deferred until resolution of the co-defendants' cases. (A2195).

Bey revealed that he first met Rivers in 2011 to have work done on his car. (A2162). Soon after, Bey starting selling Rivers pills and cocaine, either meeting Rivers at the shop or in the city. (A1667-68, A1729-30, A2028-29, A2162-63). At one point, Bey bought a white Chevy Impala from Rivers at C&S for his girlfriend, and Bey regularly brought the car in to C&S for service. Bey and Joe argued over one of the repair bills. (A2164). Bey eventually paid Joe, but he was angry with Rivers for failing to intervene as Rivers owed Bey money for drugs. (A2164-65). Because he was angry at Rivers, Bey stopped selling Rivers pills for a while. (A2165). After C&S moved to the new location, Bey started to sell drugs to Rivers again. (A2165). Even though Bey did not have any further problems with Joe, Bey planned his drug drops after Joe left for the day or Rivers would meet Bey at another location. (A2166). Rivers complained to Bey about Joe's lavish spending habits. (A2166). Rivers told Bey that Joe was "running the business into the ground," and that Rivers hated Olga. (A2166-67).

After Joe and Olga's honeymoon, Rivers called Bey to the shop and told him that Joe had drained the account and he "would pay [Bey] anything to get them out of the way." (A2168). Bey and Rivers negotiated \$60,000 for the murders. (A2168-69). Rivers wanted both Joe and Olga killed because he was afraid that if Olga was alive, she might get some of the insurance proceeds. (A2169). Rivers told Bey that if he could "make it happen," he would give Bey \$2,000 a month for life. (A2169, A2181). Rivers told Bey that his dad had written him a \$25,000 check to pay for parts, and he could use that money to pay Bey. (A2168). Rivers also told Bey about the \$1,000,000 insurance policies that Rivers and Joe had on each other and that he could use extra money after paying off the mortgage to pay Bey. (A2168). Approximately three weeks after they first negotiated the murders, Rivers gave Bey the \$5,000 Bey told him he needed to "start mak[ing] calls." (A2169).

Bey talked to Benson about committing the murders. (A2169). Benson told Bey he was going to get Aaron Thompson to help him do it. (A2170). One night in the summer of 2013, Bey drove Benson to the shop to meet Rivers, Rivers got in the car and confirmed that he would pay \$60,000 for the Connells' murders, \$30,000 for each murder. (A2170-71). Bey also talked to Thompson with Benson. (A2171). Rivers told Bey where

the Connells lived and they discussed burglarizing their residence before the murders. (A2171-72). In July 2013, Bey and a friend broke into the Connells' condominium and stole jewelry. (A2172). Rivers was happy because Joe thought his sister was somehow involved in the burglary and did not suspect Rivers' involvement. (A2172).

Benson also talked to Willis Rollins ("Rollins"), about committing the murders and one day, Bey took Rollins to the Paladin Apartments; Thompson later showed up with a gun. (A2174-75). Rollins did not commit the murders that day because too many people were around. (A2200). Other murder attempts failed, either because of timing or because Benson and Thompson did not have transportation. (A2175-76). Rivers lent them his truck for the murders, but Thompson did not want to use it because the truck had an OnStar connection. (A2176).

On September 21, 2013, Benson called Bey about that night's plans. (A2177). Bey, using Prince's phone, contacted Rivers and they set the plan to murder the Connells when they returned from the Riverfront. (A2177-78). At first, Rivers texted Bey that the Connells were leaving for the Riverfront around 7:00 p.m. (A2177). Bey texted Benson who attempted to commit the murders then, but was too late so he decided to wait until the Connells returned home. (A2177-78). As the evening progressed, Bey and

Rivers would text, and then Bey and Benson would text, followed by Benson and Thompson. (A2178).

Bey went to work the 10:00 p.m. to 6:00 a.m. shift at Kohl's (A2043-44). While there, Benson called to find out when the Connells were leaving for home; Bey called Rivers and Rivers texted Joe who answered. Rivers then texted Bey that the Connells would be leaving in 30 minutes. (A2178). Bey passed that message to Benson. (A2178). After he left work in the morning, Bey was unable to contact Rivers because his cell phone was off, so Bey called Benson who tried to call Thompson; Thompson was not answering his phone. (A2179). As Bey drove home from Kohls, he noticed police at C&S. (A2179).

Benson called Bey at 8:00 a.m. to say it was official and to "collect the money." (A2179). When Bey and Rivers finally spoke later that day, Rivers told him that the police had taken \$25,000 in a search warrant of his house. (A2180). Rivers said he would borrow the money and sell his truck and tools to "get the money." (A2180). The police had not actually seized any money when they searched Rivers home. (A2180, A2236). Rivers subsequently gave Bey \$5,000, which Bey gave to Thompson; Thompson told Bey to tell Rivers to get the money, "or it's gonna get serious." (A2180-81). Rivers gave Bey \$2,500 on one further occasion and then

\$1,500 more on another date, all of which Bey gave to Benson. (A2182).

Gorman left Rivers the day of the murders and moved with their son to her parents' home. (A1606). She became increasingly worried about Rivers' paranoia and drug use, which increased such that he was unable to run the shop effectively. (A1606-07, A1621-22, A1650, A2024). Rivers occasionally stopped by Monahan's house, around 3:00 a.m., and "would always lead into I have to tell you something, if I tell you, you're not going to like me anymore [] or be my friend anymore." (A2024, A2026). Monahan always steered Rivers away from saying anything. (A2024).

In June of 2014, Gorman contacted the police, reporting that Rivers had called to say he was turning himself in to NCCPD because he was responsible for what happened to Joe and Olga. (A1608-09). Rivers did not elaborate. (A1608-09; A1625). Rivers did not turn himself in.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING RIVERS' MOTION FOR CHANGE OF VENUE.

Question Presented

Whether the Superior Court abused its discretion in denying Rivers' pre-trial motion for change of venue.

Standard and Scope of Review

This Court reviews the trial judge's denial of a pre-trial motion for change of venue for abuse of discretion.⁷

Merits

Rivers argues that the trial court's denial of his motion for change of venue violated his constitutional right to a trial by an impartial jury. (Corr. Op. Brf. at 23). He argues that prejudice must be presumed because he proffered "evidence of highly inflammatory or sensationalized media coverage prior to trial." (*Id.* at 32). He is mistaken.

Delaware Superior Court Criminal Rule 21(a) states:

For prejudice in the county. The court upon motion of the defendant shall transfer the proceeding ... to another county ... if the court is satisfied that there exists in the county where the prosecution is pending a reasonable probability of so great a

⁷ *Sykes v. State*, 953 A.2d 261, 272 (Del. 2008) (citing *Riley v. State*, 496 A.2d 997, 1015 (Del. 1985)).

prejudice against the defendant that the defendant cannot obtain a fair and impartial trial in that county.⁸

“The fact that a criminal case generates publicity does not, without more, require a change of venue to preserve a defendant’s right to a fair trial.”⁹ A defendant must present “highly inflammatory or sensationalized pre-trial publicity” that on its face is “sufficient for the court to *presume* prejudice [of the potential jurors].”¹⁰

In the Superior Court, Rivers argued that “the saturation of media coverage [] prejudiced Rivers as evidenced by a public opinion awareness survey by Susequehanna Polling and Research, whereby a poll was taken of 1050 residents of Delaware, 350 from each of Delaware’s three counties.” (A35). Of the small sampling surveyed, 39% of the New Castle County residents knew about the case as compared to 17% of those in Kent and Sussex Counties.¹¹ Of those, 90% in New Castle County, 95% in Kent County and 98% in Sussex County, thought Rivers was guilty.¹² Despite the results of the survey, Rivers continues to argue that Rivers was “effectively

⁸ Del. Super. Ct. Crim. R. 21(a).

⁹ *Powell v State*, 49 A.3d 1090, 1097 (Del. 2012) (citing *Riley*, 496 A.2d at 1015).

¹⁰ *Id.*

¹¹ *State v. Christopher Rivers*, I.D. No. 1409001584, Order, at 4, Butler, J. (Del. Super., Dec. 22, 2015). (A197).

¹² *Id.*

prejudiced [] from [] getting a fair and impartial jury in New Castle County. (Corr. Op. Brf. at 34-35).

The Superior Court denied Rivers motion without prejudice, because it found that the media coverage of the case “[wa]s not so highly inflammatory or sensationalized as would render Defendant’s trial in New Castle County ‘but a rigid hollow formality.’”¹³ Moreover, the court specifically found:

[T]he potential jurors in New Castle, Kent, and Sussex Counties have been equally exposed to the media coverage in this case. Defendant provided a sampling of more than 40 news reports and videos since September 2013. Many of those articles were published in the News Journal, which is distributed statewide.¹⁴ Thus, it is “unrealistic to think a jury pool that is significantly ignorant of the allegations involved in this case could be found in Kent or Sussex counties.”¹⁵

The court was not convinced that Rivers’ trial should be transferred because the survey results indicated that each of the other potential counties presented a lower likelihood of a fair trial.¹⁶ The trial court noted that the media coverage in this case “simply meets the norm for a high profile case,”

¹³ *Id.* at 6 (citing *Rideau v. Louisiana*, 373 U.S. 723, 726 (1963)).

¹⁴ *See State v. Flagg*, 1999 WL 167774, at *2 (Del. Super. Mar. 3, 1999) (“[T]he News Journal is a newspaper with state-wide circulation. There is no reason to believe that the interest in this case was any less intense in Kent and Sussex Counties as it has been in New Castle County.”).

¹⁵ *See Rivers*, I.D. No. 1409001584, Order, at 6. (A199).

¹⁶ *Id.* at 7-8.

and “[i]f the atmosphere created by the media coverage has become so pervasive that it is impossible to obtain an appropriate number of qualified jurors or alternates, that will become apparent at the time of jury selection.”¹⁷ Thus, because Rivers failed to show a reasonable probability of prejudice justifying a venue change, the court denied Rivers’ motion without prejudice, not foreclosing a later venue transfer if the *voir dire* process established that, in fact, the jury pool was prejudiced.¹⁸

Rivers attempts but fails to distinguish his case from *Powell*, where this Court upheld the trial court’s denial of a change of venue in a highly publicized case involving the murder of a police officer.¹⁹ (Corr. Op. Brf. at 35). Rivers argues that, unlike *Powell*, there was no individual *voir dire* in his case and the “trial court’s *voir dire* did not remedy the issue.” (*Id.*). But Rivers points to no instances of prejudice during his *voir dire* and made no objections at trial. Rather, Rivers relies on his pre-trial poll results. This reliance is unavailing.

The purpose of *voir dire* is to ensure the selection of qualified jurors, who have no bias or prejudice that would prevent them from returning an

¹⁷ *Id.* at 8 (citing *Flagg*, 1999 WL 167774, at *2 (internal citation omitted)).

¹⁸ *Id.*; see *Powell*, 49 A.3d at 1097.

¹⁹ 49 A.3d at 1099.

impartial verdict based on the law and the evidence that is properly admitted during trial.²⁰ Here, in *voir dire*, the trial court asked potential jurors or venire persons:

This case has been frequently referred to as the Paladin Club murder case, in which a local man, Christopher Rivers, part owner of C&S Automotive Repair, on Route 202, was arrested and charged [] with allegedly hiring other men – Joshua Bey, Dominique Benson and Aaron Thompson – to kill his business partner, Joseph Connell, and his wife, Olga Connell. [] .

If you have heard anything about this case – and we assume you have – would anything you have read or heard about this case through the news media or elsewhere make it difficult for you to render a fair and impartial decision in the case, based on the evidence introduced at trial and the instructions on the law which I will give you?

Have you formed an opinion whether Christopher Rivers [] is guilty or not based on what you read or heard through the news media or discussed with anyone else? (A741).

The trial court’s *voir dire* on the issue was sufficient to select qualified, unbiased jurors. Indeed, a review of the jury selection does not assist Rivers’ argument. For example, the court excluded one juror who saw “what was in the paper” and knew two people on the witness list. (A752-33). The court excluded another juror who said that from reading the newspaper, “I think it’s pretty overwhelmingly obvious that he’s guilty and I

²⁰ See *Cooke v. State*, 97 A.3d 513, 554 (Del. 2014) (citing *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985) (citing *Parson v. State*, 275 A.2d 777, 780 (Del. 1971))).

have a very tough time being impartial about it.” (A755-56). The court excused yet another juror who had met the victims, followed the media coverage and had formed her own opinion, and one who had followed the case and said she believed a lot of what was in the paper. (A759, A792). At the end of jury selection, Rivers made no motions. Rivers fails to provide evidence of juror prejudice, and a jury of New Castle County residents was properly empaneled.

ARGUMENT

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION BY ADMITTING CODEFENDANTS' STATEMENTS MADE AFTER THE MURDERS UNDER DRE 801(d)(2)(E).

Question Presented

Whether the Superior Court erred by admitting coconspirator statements made after the murders under DRE 801(d)(2)(E).

Standard and Scope of Review

This Court reviews a trial judge's evidentiary rulings for an abuse of discretion.²¹

Merits

Rivers argues that the trial court erred by admitting co-conspirators' statements made after the commission of the Connells' murders. (Corr. Op. Brf. at 41). Rivers asserts that once the principal objective of the murders was complete, the conspiracy ended, and any statements made after the murders were inadmissible. He is incorrect.

Under Delaware Rule of Evidence (DRE) 801(d)(2)(E), a statement that normally would be considered inadmissible hearsay may be admitted

²¹ *Smith v. State*, 913 A.2d 1197, 1228 (Del. 2006) (citing *Dollard v. State*, 838 A.2d 264, 266 (Del. 2003); *Chapman v. State*, 821 A.2d 867, 869 (Del. 2003)).

under an exception if the statement is offered against a party and is made by the parties co-conspirator during the course and in furtherance of the conspiracy.²² “A statement qualifies as an exception if the offering party can show by a preponderance of the evidence that: 1) a conspiracy existed; 2) the co-conspirator and the defendant against whom the statement is offered were members of the conspiracy; and 3) the statement was made during and to further the conspiracy.”²³

“The [d]uration of a conspiracy depends on the fact specific scope of the original agreement, but generally a conspiracy terminates upon accomplishment of the principal objective unless specific evidence is introduced indicating that the scope of the original agreement included acts taken to conceal the criminal activity.”²⁴ In some cases, however, the object of the conspiracy includes more than the commission of the substantive offense.²⁵ For instance, this Court has stated that “statements made after the robbery but before the proceeds were divided are made ‘in furtherance of the

²² *Harris v. State*, 695 A.2d 34, 42 (Del. 1997) (citing *Lloyd v. State*, 534 A.2d 1262 (Del. 1987)).

²³ *Lloyd*, 534 A.2d at 1265.

²⁴ *State v. Benson*, 2016 WL 2988644, at *1 (Del. Apr. 27, 2016) (citing *Smith v. State*, 647 A.2d 1083, 1089 (Del. 1994)).

²⁵ *See State v. Cruz*, 672 P.2d 470, 476 (Ariz. 1983).

conspiracy.”²⁶ The same logic applies here, where payment for the murders was the last term of the conspiracy.²⁷

The Superior Court found unavailing Rivers’ argument that the conspiracy ended when the Connells were murdered.²⁸ In making that determination, the court, relying on several murder-for-hire cases from other jurisdictions, determined that “the cases seem fairly aligned along the proposition that in a murder-for-hire case, the conspiracy ends when the “hiree” has been paid.”²⁹ The court appropriately found no reason to depart from that conclusion.³⁰

²⁶ *Jones v. State*, 940 A.2d 1, 11 (Del. 2007) (citing *Hackett v. State*, 1999 WL 624108, at *3 (Del. July 16, 1999) (overruled on other grounds) (quoting *Williams v. State*, 494 A.2d 1237, 1242 (Del. 1985))).

²⁷ See *Cruz*, 672 A.2d at 476.

²⁸ See *Benson*, 2016 WL 2988644, at *1.

²⁹ *Id.* at *2. (citing e.g., *United States v. Johnson*, 443 F. App’x 85, 92-93 (6th Cir. 2011) (duration of murder-for-hire conspiracy spanned from date of original agreement to date of final payment after commission of the murder); *State v. Jones*, 873 P.2d 122, 130 (Idaho 1994) (conspiracy for paid murder “was not complete until final payment was made, and all statements made in furtherance of the conspiracy until final payment are admissible [under the co-conspirator hearsay exception]”); *Cruz*, 672 P.2d at 477 (“the transfer of money by appellant to them [the contracted killers] was one of the main objectives of the conspiracy as far as they were concerned.”); *People v. Saling*, 500 P.2d 610, 615 (Cal. 1972) (where money offered to kill victim motivated defendant to participate in the plan and payment was one of the plan’s main objectives, statements made before payment occurred were admissible as being made during the conspiracy)).

³⁰ See *Benson*, 2016 WL 2988644, at *2.

In *United States v. Johnson*, the appellant had been convicted of murder, conspiracy and related charges for hiring someone to beat his mother to death.³¹ The Sixth Circuit Court of Appeals upheld the trial court's admission, under Federal Rule of Evidence ("FRE") 801(d)(2)(E),³² of a co-conspirator's statement that concerned Johnson's failure to pay the remaining amount owed for the murder.³³ As the government argued, the objectives of the conspiracy did not consist solely of the murder but also, integrally, included the post-murder payment from the defendant to the co-conspirator garnered from the victim's proceeds.³⁴ Therefore, the murder for hire conspiracy lasted until payment was made, which never happened.³⁵

Similarly, in *Commonwealth v. Watson*,³⁶ the defendant, who had been convicted of third-degree murder, appealed, arguing that co-conspirator statements that the defendant killed the victim in order to secure payment for a contract killing were inadmissible hearsay.³⁷ The Pennsylvania Superior Court upheld the trial courts' ruling that the statements were admissible,

³¹ 443 F. App'x at 88.

³² FRE 802(d)(2)(E) is substantially similar to DRE 801(d)(2)(E).

³³ *Johnson*, 443 F. App'x at 92.

³⁴ *Id.* at 93.

³⁵ *Id.*

³⁶ 512 A.2d 1261 (Pa. 1986).

³⁷ *Id.* at 1263.

finding “it [was] clear that payment for the murder was part of the original plan, and the conspiracy did not end until the murder was reported and payment received.”³⁸

The same is true in this case. Here, Rivers hired Bey, who then brought in Benson and Thompson for assistance, to murder the Connells. Rivers negotiated a price of \$60,000 with Bey and gave him \$5,000 to “start making calls” to accomplish the murders. Rivers met with Benson and Bey and reiterated his promise of a total of \$60,000 for the completion of the murders. For the sole purpose of being paid, Bey, Benson and Thompson executed the plan and then sought payment. On three different occasions, Rivers paid Bey more money, but the amount after the murders only totaled about \$9,000. At the time he was arrested Rivers continued to owe Bey, Benson and Thompson over half of the money he had agreed to pay them. The fact that Rivers never paid the agreed-upon amount as promised, does not inure to his benefit, as he suggests.³⁹ (Corr. Op. Brf. at 43-44). *Grunewald v United States*,⁴⁰ the United States Supreme Court case Rivers

³⁸ *Id.*

³⁹ Rivers’ argument that there was an offer to pay Bey ‘\$2,000 forever’ (A2169) does not change the analysis. Rivers did not pay the amount he negotiated with Bey and Benson or fulfill any other financial promise.

⁴⁰ 353 U.S. 391 (1957).

cites, is inapposite. *Grunewald* dealt with the application of the three-year statute of limitations to conspiracy.⁴¹ The *Grunewald* Court held that because the conspirators took no overt acts nor had an agreement to conceal their acts after the fact, the conspiracy had ended when the defendants obtained “no prosecution” rulings, and not thereafter, therefore prosecution for conspiracy was barred under the statute of limitations.⁴² That is not the case here and the distinction between routine or implied concealment and active payment and attempts to procure payment are enormous. Here, but for Rivers hiring the co-conspirators, no crime would have been committed.

Following *Smith v. State*, the trial court determined the end of the conspiracy based on the “fact-specific scope of the original agreement.”⁴³ As the State alleged, and the court found, Rivers hired Bey, who then contracted with two others to kill the Connells in exchange for an agreed amount of money.⁴⁴ Receiving the agreed-upon payment was absolutely a “primary objective” of the co-defendants’ original plan, as they had no other

⁴¹ *Id.* at 396-97.

⁴² *Id.* at 402, 406. (“Acts of covering up, even though done in the context of a mutually understood need for secrecy, cannot themselves constitute proof that concealment of the crime after its commission was part of the initial agreement among the conspirators. For every conspiracy is by its very nature secret.”). *Id.* at 402.

⁴³ *Benson*, 2016 WL 2988644, at *2 (citing *Smith*, 647 A.2d at 1089).

⁴⁴ *Id.*

motive for committing the murders.⁴⁵ Thus, the court appropriately found “little difficulty” concluding that the co-conspirators’ statements made after the murders and intended to secure payment were admissible under the co-conspirator exception to the hearsay rule.

⁴⁵ *Id.*

CONCLUSION

The judgment of the Superior Court should be affirmed.

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CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of the Supreme Court of Delaware, hereby certifies that on September 27, 2017, she caused the attached document to be delivered via Lexis-Nexis File and Serve to:

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTOPHER RIVERS,)	
)	
Defendant-Below,)	
Appellant)	
)	
v.)	No. 536, 2016
)	
STATE OF DELAWARE,)	
)	
Plaintiff-Below,)	
Appellee)	

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