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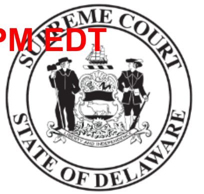

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMON ANDERSON,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 476, 2019
	)	
	)	
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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Dated: September 23, 2020

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NATURE AND STAGE OF THE PROCEEDINGS

On October 16, 2017, a New Castle County grand jury indicted Damon Anderson ("Anderson") and several co-defendants with Criminal Racketeering and other charges associated with the activities of a drug dealing enterprise headed by co-defendants Eric Lloyd ("Lloyd") and Dwayne White ("White"). A2; A24-72. Specifically, the indictment charged Anderson with Conspiracy to Commit Criminal Racketeering and several predicate acts including Drug Dealing, Aggravated Possession of Heroin, Money Laundering, and Conspiracy to Commit Money Laundering. A24-72. On June 3, 2019, Anderson and his co-defendants, Lloyd and White, proceeded to a jury trial in the Superior Court. A16. After a nine-day trial, the jury convicted Anderson of Conspiracy to Commit Criminal Racketeering, two counts of Drug Dealing (Tier 4), eight counts of Conspiracy Second Degree, Money Laundering, and Attempt to Evade or Defeat Tax. A18. The jury acquitted Anderson of Aggravated Possession of Heroin. A18. The State entered a *nolle prosequi* on Conspiracy to Commit Money Laundering. A18.

On October 18, 2019, the Superior Court declared Anderson an habitual offender and sentenced him to an aggregate 32 years of incarceration followed by descending levels of supervision. A1652-54. Anderson filed a timely notice of appeal and an opening brief. This is the State's answering brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Anderson's request to sever his case from Lloyd and White. Anderson has failed to demonstrate that joinder with Lloyd and White resulted in prejudice.

II. Appellant's argument is denied. The Superior Court did not abuse its discretion when it admitted firearms recovered during a search warrant executed at a co-defendant and fellow criminal enterprise member's residence. The firearms were relevant to show the business and operations of Lloyd and White's criminal enterprise.

III. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Anderson's motion(s) to suppress evidence discovered as a result of search warrants for his home and seven phones. The warrants were constitutionally compliant, satisfying the probable cause standard.

IV. Appellant's argument is denied. The Superior Court properly denied Anderson's motion for judgment of acquittal on the Money Laundering and Attempt to Evade Tax charges. Any rational juror could have convicted Anderson on those charges when viewing the evidence in the light most favorable to the State. Anderson failed to demonstrate plain error with regard to his conviction for Drug Dealing.

STATEMENT OF FACTS

Between 2015 and 2017, Eric Lloyd ("Lloyd") sat atop a criminal enterprise that sold drugs. When Lloyd went to federal prison in 2017, he transferred control of the enterprise to White. White ran the enterprise until his arrest, and during that time expanded the mainly cocaine drug dealing business to include heroin. In 2015, members of the enterprise suspected that Markevis Stanford ("Stanford"), a former member of the enterprise, was cooperating with the police, sparking a feud between Stanford and certain members of the enterprise. (B7, 13-14). The conflict involved shootings, assaults, robberies, and witness intimidation. Members of the enterprise, including White, placed a "bounty" on Stanford's life, which ultimately led to the June 2017 kidnapping and murder of Stanford's girlfriend in Maryland and the shooting of an innocent child in Wilmington.

Several members of the drug dealing enterprise who had been indicted with Anderson, White, and Lloyd and resolved their cases by guilty pleas, testified at trial. Tyrone Roane ("Roane") pled guilty to multiple counts of conspiracy. (A1024). Roane testified about some of his drug dealing activity for the enterprise. (A983). Roane explained that White would advance him a quantity of drugs at an agreed upon price. (A984). Roane would then sell the drugs, pay White the agreed upon price, and keep the remaining amount as profit from the sales. (A984). According to Roane, other members of the enterprise had the same arrangement with White,

including Anderson. (A984). Roane and Anderson were childhood friends, and Roane identified Anderson as a drug dealer who worked within the criminal enterprise. (A983-84).

When shown ledgers recovered during the execution of search warrants of locations associated with White (State's Trial Exhibits 82-83), Roane testified that the entries listed the names of people in the enterprise who owed White money for drugs. (A982-83). The ledgers included an entry for a person named "Frog," which was Anderson's nickname. (A982-83). According to Roane, Anderson had an "open-door policy" with White. (A984). White would supply Anderson and Roane with drugs to sell whenever they wanted and in whatever quantity they wanted. (A984). When the police appeared to be investigating White, Anderson "became the legs" for White – personally supplying other drug dealers with White's store of drugs. (A984). On one occasion during that time, Anderson directly delivered two ounces of crack cocaine to Roane. (A984-85). Roane also testified that he observed Anderson selling drugs for White more than once. (A1232).

Dontae Sykes ("Sykes"), who had federal charges related to the June 6, 2017 kidnapping and murder pending at the time of Anderson's trial, was also a member of the enterprise. (A1386-87). After his 2016 release from prison, Sykes began selling cocaine for Lloyd. (A1388; A1391). According to Sykes, Lloyd was at the top of cocaine trade in Wilmington and White, backed by Lloyd, was at the top of

the heroin trade. (A1389). When Lloyd went to federal prison in 2017, Sykes began dealing with White directly. (A1391). At times, Sykes would deal with Anderson who would assist in supplying heroin for White. (A1391). According to Sykes, Anderson was in the "inner circle" of drug dealers that surrounded White. (A1400).

At trial, Sykes testified that he knew how drug dealers like White, Lloyd, and Anderson concealed the proceeds and assets of the criminal enterprise by using gambling, investment properties and LLCs. (A1395-96). According to Sykes, drug dealers use proceeds from their drug trade to legally gamble in order to "wash" the money and create a "paper trail." (A1395). They also purchase investment properties with the illegal proceeds because "this drug thing don't last forever." (A1395-96). Sykes also explained the use of LLCs to hide physical assets and money. (A1396). Documents discovered in Anderson's home reflected he had an interest in a cleaning franchise that he operated with Jamar Farnum, a fellow member of the criminal enterprise. (A795-96).

When investigators executed a search warrant at Anderson's residence, they recovered seven cell phones. (A613-14; A749). The police also discovered a cache of sandwich bags in the living room, bills in Anderson's name, several gambling receipts, money order receipts, designer sneakers worth $1750, a designer shirt worth $550, and a W-2 form showing Anderson made just over $16,000 in 2016. (A789-96).

Sgt. Stephen Barnes provided context to the items police discovered in Anderson's home. According to Sgt. Barnes, the fact that there were seven phones in Anderson's home was significant. (A817). Some of the phones appeared to be "burner" phones, typically used by drug dealers. (A817). A "burner" is a cheap phone that is disposed of after a short period time and is used to avoid police detection and call interception. (A816-17). One of the phones recovered was part of the wiretap evidence collected in the case. (A1449). One series of calls intercepted was between White and Anderson. (A1485). During the calls, White directed Anderson, who was in Las Vegas, to place a $4500 bet on a boxing match. (State's Trial Exhibits 342-45). Shortly thereafter, White told Anderson to cancel the bet and place a $20,000 bet on the opposing boxer. (State's Trial Exhibits 342-45). Text messages discovered on one of the recovered phones reflected a string of drug transactions conducted by Anderson. (State's Trial Exhibits 264-70; A1449).

Many of the documents recovered by police indicated Anderson was attempting to launder the proceeds from his part of the criminal enterprise's drug trade. The gambling receipts discovered by police consisted of parlay betting tickets. (A799-806). The receipts reflected thousands of dollars in wagers with potential payouts of over $100,000 in some cases. (A799-806). According to Sgt. Barnes, drug dealers use legal sports betting to "legitimize" their income from selling drugs. (A807). As Sgt. Barnes explained, "if you are able to get winning tickets, so if you

can bet thousands of dollars and you hit one of them and you win $20,000, you can keep the ticket to legitimize any further drug proceeds or attempt to legitimize." (A807). The money order receipts police discovered were also significant. Sgt. Barnes explained that money orders are used similarly to legal gambling proceeds as a way for drug dealers to show a legitimate source of income or obscure proceeds from drug sales. (A807).

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING ANDERSON'S REQUEST TO SEVER HIS CASE FROM THAT OF HIS CODEFENDANTS, LLOYD AND WHITE.

Question Presented

Whether the Superior Court abused its discretion by declining to sever Anderson's trial from that of his co-defendants, Eric Lloyd and Dwayne White.

Standard and Scope of Review

"This Court reviews the trial court's decision on a motion to sever for abuse of discretion. A trial judge's denial of a motion to sever will not be set aside on appeal 'unless [the] defendant demonstrates a reasonable probability that the joint trial caused substantial injustice.'"[1]

Merits of Argument

On appeal, Anderson claims the Superior Court abused its discretion when it denied his request to have his case severed from that of his codefendants, Lloyd and White. He contends, "there was a reasonable probability that substantial prejudice would result from joinder."[2] Anderson is wrong. The jury would have heard the same evidence even if Anderson's case had been severed, because he was charged

[1] *Otis Phillips v. State*, 154 A.3d 1130, 1138 (Del. 2017) (quoting *Winer v. State*, 950 A.2d 642, 648 (Del. 2008)).
[2] Op. Brf. at 13.

with Conspiracy to Commit Racketeering and his underlying charges were part of the racketeering case. In any event, Anderson cannot demonstrate the probability of substantial prejudice under the framework used to analyze claims of improper joinder.

Superior Court Criminal Rule 8(a) permits the joinder of two or more offenses in the same indictment if the offenses "are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan."[3] Similarly, Superior Court Criminal Rule 8(b) permits joinder of defendants in the same indictment "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses."[4] A trial court may grant severance of charges or defendants if the defendant is prejudiced by the joinder.[5]

"Ordinarily, defendants indicted together should be tried together, but, if justice requires it, the trial judge should grant separate trials."[6] This Court has set

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[3] Super. Ct. Crim. R. 8(a).
[4] Super. Ct. Crim. R. 8(b).
[5] Super. Ct. Crim. R. 14.
[6] *Otis Phillips,* 154 A.3d at 1137 (citing *Skinner v. State*, 575 A.2d 1108, 1119 (Del. 1990); Super. Ct. Crim. R. 8(b)); *Jeffrey Phillips v. State*, 154 A.3d 1146, 1156 (Del. 2017) (citing same). Because Otis Phillips and Jeffrey Phillips were tried together and this Court relied on the same body of law to address both defendants' claims of prejudicial joinder, the State has limited its citations to *Jeffrey Phillips v. State* unless otherwise required.

forth four factors that a trial court should consider when determining whether to sever defendants: "(1) problems involving a codefendant's extra-judicial statements; (2) an absence of substantial independent competent evidence of the movant's guilt; (3) antagonistic defenses as between the codefendant and the movant; and (4) difficulty in segregating the State's evidence as between the codefendant and the movant."[7]

Anderson claims Dontae Sykes' testimony referring to White "waiting on Frog," presented a "challenge during cross examination"[8] and is a factor that should be considered in determining whether to sever his case. Sykes' testimony was not an extra-judicial statement made by White. During Sykes' direct examination the following exchange took place:

> PROSECUTOR: Did you ever deal directly with Frog [Anderson] yourself?
>
> SYKES: Yeah, dealing with Bop [White] with the dope, at times specifically, he was waiting on the dope to get to send it down [to] Seaford, and he calling and waiting on Frog, waiting on Frog, he was taking long.[9]

Sykes was describing White waiting for Anderson to deliver heroin to Seaford. The State did not introduce an extra-judicial statement made by White. In any event,

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[7] *Jeffrey Phillips*, 154 A.3d at 1156 (citing *Flouditis v. State*, 726 A.3d 1196, 1210 (Del. 1999)).
[8] Op. Brf. at 15.
[9] A1391.

Anderson concedes the Sykes testimony on this point was "somewhat innocuous."[10] This factor weighs against severance.

Anderson argues that the overwhelming evidence against White and Lloyd, the "potential affiliation" with the drug dealing enterprise, and the shooting of an innocent child overshadowed any evidence that he was guilty of drug dealing. He contends "[t]here is no independent competent evidence that [he] is guilty of Drug Dealing . . . Money Laundering or Tax Fraud."[11] Anderson's argument is unavailing. Anderson disregards the fact that he was charged with Conspiracy to Commit Criminal Racketeering. As a result of that charge, the State was required to establish the existence of the criminal enterprise, it's criminal purpose – drug dealing, and Anderson's affiliation with the criminal enterprise and his role committing underlying criminal acts in furtherance of the criminal enterprise. The attempted murder of Markevis Stanford and the resulting injury of an innocent child were directly related to the drug dealing enterprise. Whatever the origin of the feud with Stanford, it was bad for the drug dealing business.

Apart from the fact that the evidence related to the conspiracy to commit criminal racketeering would have been introduced even if Anderson's case had been severed, there was independent competent evidence that supported his convictions

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[10] Op. Brf. at 15.
[11] Op. Brf. at 16.

for Drug Dealing, Money Laundering and Tax Fraud. Roane and Sykes' testimony clearly established that Anderson was a drug dealer for the criminal enterprise. The ledgers recovered by police reflected that Anderson was dealing drugs for White. Roane testified about Anderson's "open-door policy"[12] with White, how Anderson "became the legs"[13] for White – personally supplying other drug dealers with White's store of drugs, and that Anderson directly delivered two ounces of crack cocaine to Roane on one occasion.[14] Roane also testified that he observed Anderson selling drugs for White more than once.[15] Sykes testified that he dealt with Anderson, who would assist in supplying heroin for White.[16] According to Sykes, Anderson was in the "inner circle" of drug dealers that surrounded White.[17] Additionally, when investigators executed a search warrant at Anderson's residence, they recovered seven cell phones, and a cache of sandwich bags, which according to Sgt. Barnes were indicators that Anderson was a drug dealer. Text messages discovered on one of the recovered phones reflected a string of drug transactions conducted by Anderson.[18]

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[12] A984.
[13] A984.
[14] A984-85.
[15] A1232.
[16] A1391.
[17] A1400.
[18] State's Trial Exhibits 264-70; A1449.

Many of the documents recovered by police indicated Anderson was attempting to launder the proceeds from his part of the criminal enterprise's drug trade and conceal his illegitimate income. Sgt. Barnes and Sykes explained methods the methods by which drug dealers launder the proceeds from the sale of illegal drugs, which includes the use of legal gambling, money orders and LLCs. In Anderson's case, police discovered gambling receipts that reflected thousands of dollars in wagers, money orders, and documents reflecting Anderson's interest in an LLC. The State also introduced evidence of Anderson's lavish lifestyle, which included ridiculously expensive clothing, and trips to Las Vegas and Miami (to shoot a rap video), and contrasted it with Anderson's W-2, which indicated he did not earn an income that could support such a lifestyle.[19] There was independent evidence the jury could use to convict Anderson of Drug Dealing, Money Laundering and Tax Fraud. This factor also weighs against severance.

Anderson's contention that antagonistic defenses existed because "White conceded he was dealing drugs and did not contest any of the drug dealing, money laundering, tax or other underlying offenses"[20] is similarly unavailing. "[T]he presence of hostility between a defendant and his codefendant or 'mere

[19] A789-96.

[20] Op. Brf. at 18.

inconsistencies in defenses or trial strategies' do not require a severance."[21] White's concessions did not create a situation in which "the jury had [to] reasonably accept the core of the defense offered by either defendant only if it reject[ed] the core of the defense offered by his codefendant."[22] Even without White's concession, the jury could very easily have concluded that Anderson was a drug dealer in a criminal enterprise.

Anderson contends "the tone of the trial . . . made it difficult for the jury to segregate the evidence."[23] He argues that the evidence introduced at trial in support of the Attempted Murder charge and associated acts "paint[ed] a picture that [] Anderson was responsible through the enterprise for these acts."[24] But, Anderson fails to acknowledge that the trial judge instructed the jury to independently assess the evidence against each defendant:

> The defendants are each charged with separate offenses that are set forth in the indictment. These are each separate and distinct offenses, and you must independently evaluate each offense. The fact that you reach a conclusion with respect to one offense, or with regard to one defendant, does not mean that the same conclusion will apply to any other charged offense or to any other charged defendant. Each charge before you is separate and distinct, and you must evaluate evidence as

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[21] *Jeffrey Phillips*, 154 A.3d at 1157 (quoting *Outten v. State*, 650 A.2d 1291, 1298 (Del. 1994)).
[22] *Jeffrey Phillips*, 154 A.3d at 1157 (quoting *Bradley v. State*, 559 A.2d 1234, 1241 (Del. 1989)).
[23] Op. Brf. at 18.
[24] Op. Brf. 19.

> to one offense independently from evidence of each other offense and render a verdict as to each individually.[25]

"Juries are presumed to follow the court's instruction,"[26] and there is no basis to conclude the jury did not do so here. In fact, the jury verdict, in finding Anderson guilty of all charges save for one count of Aggravated Possession of Heroin, reflects thoughtful parsing of evidence with respect to each defendant and each alleged crime. Finally, Anderson ignores the stipulation between the State and White, which was read to the jury, in which White assumes full responsibility for attempting to bribe the Banner family:

> The State of Delaware and defendant Dwayne White hereby stipulate to the following: One, one of Dwayne White's nicknames is Boop. Two, that Dwayne White approached Joshua Potts, Shalynn Banner, and Deborah Banner with an offer of money in exchange for their exoneration of Michael Pritchett in the shooting of Jashown Banner.[27]

The Superior Court further instructed the jury that, "[w]hen the attorneys on both sides stipulate or agree as to the existence of a fact . . . you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved."[28]

Anderson fails to support his argument that he was prejudiced by his joint trial with Lloyd and White. As the verdict makes clear, the jury appropriately cabined the evidence attributable to each defendant and was neither confused nor improperly

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[25] A1597.
[26] *Jeffrey Phillips*, 154 A.3d at 1157.
[27] A1431.
[28] A1598.

influenced by the evidence associated solely with White and Lloyd. The Superior Court did not abuse its discretion when it denied Anderson's request for severance.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT ADMITTED FIREARMS SEIZED FROM ANOTHER MEMBER OF THE CRIMINAL ENTERPRISE TO WHICH ANDERSON BELONGED.

Question Presented

Whether the Superior Court abused its discretion when it permitted the State to introduce into evidence firearms seized from Maurice Cooper, who was a member of the criminal enterprise run by Lloyd and White, and for which Anderson sold drugs.

Standard and Scope of Review

"This Court reviews the Superior Court's decision to admit or exclude evidence for abuse of discretion."[29]

Merits of Argument

Anderson argues the Superior Court abused its discretion by admitting firearms recovered at the residence of co-defendant and fellow member of Lloyd and White's criminal enterprise, Maurice Cooper. He contends the evidence "inflamed the jury."[30] Anderson's claim is unavailing. The State properly offered evidence of guns found in the possession of a member of the enterprise as evidence supporting the existence and dealings of the enterprise. The Superior Court did not abuse its

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[29] *Roy v. State*, 2018 WL 6004462, at *2 (Del. Nov. 14, 2018) (citing *Urquhart v. State*, 133 A.3d 981, 981 (Del. 2016)).
[30] Op. Brf. at 21.

discretion by admitting the evidence as relevant to making the existence of Lloyd and White's association-in-fact criminal enterprise more probable.

Relevant evidence – "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable"[31] – is admissible unless otherwise provided by statute or rule.[32] Relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."[33] "The determination of relevancy and unfair prejudice are 'matters within the sound discretion of the trial court, and will not be reversed in the absence of clear abuse of discretion.'"[34]

Anderson joined in White's objection to the admission of firearms found in Maurice Cooper's possession.[35] Anderson contends that the firearm evidence was not relevant in his trial and that it inflamed the jury. He is mistaken. The Superior Court did not abuse its discretion by admitting evidence of firearms found in Cooper's possession to assist in establishing the business and operations of Lloyd

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[31] D.R.E. 401.
[32] D.R.E. 402.
[33] D.R.E. 403.
[34] *Banks v. State*, 93 A.3d 643, 646-47 (Del. 2014) (quoting *Gallaway v. State*, 65 A.3d 564, 569 (Del. 2013)).
[35] B5.

and White's criminal enterprise, of which Anderson was a member.

The State explained that the illegal possession of firearms by a fellow member of the enterprise was alleged in Lloyd and White's criminal racketeering charge, and that it "goes to the existence of the enterprise, which . . . is the first step in proving the racketeering or conspiracy to commit racketeering."[36] The Superior Court agreed, finding the objection "more goes to weight than admissibility."[37] The court continued, finding the evidence was relevant to assist in proving the existence and operations of the enterprise. Evidence that members possessed or routinely carried firearms may be offered to prove the existence of the enterprise.[38]

Here, the State introduced evidence that firearms were found at Cooper's 18th Street apartment and at a storage garage on Downing Drive.[39] Investigators also found about 14,000 bags of heroin in the Downing Drive garage.[40] The firearms introduced at trial were directly linked to the enterprise's drug dealing operation. The Superior Court did not abuse its discretion by allowing the State to introduce the firearm evidence to establish the existence and continuity of Lloyd and White's

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[36] B5.
[37] B6.
[38] *See, e.g., United States v. Jones,* 873 F.3d 482, 488-89 (5th Cir. 2017) (discussing evidence of enterprise members' possession and use of firearms for the group's benefit); *United States v. Applins*, 637 F.3d 59, 68 (2d Cir. 2011) (discussing government's introduction of evidence showing enterprise members routinely carried firearms in order to protect their territory).
[39] B7.
[40] B8.

association-in-fact enterprise.

To the extent that Anderson is using this claim as a vehicle to extend his severance claim, his argument fails. The court's instructions and the jury's verdict demonstrate that the jury considered each count against each defendant separately.

III. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED ANDERSON'S MOTION(S) TO SUPPRESS.

Question Presented

Whether the Superior Court abused its discretion when it denied Anderson's suppression motions related to police searches of his home and the contents of seven cell phones recovered from Anderson's home.

Standard and Scope of Review

This Court reviews a trial court's denial of a motion to suppress for an abuse of discretion.[41]

Merits of Argument

Prior to trial, Anderson moved to suppress the evidence seized from his home pursuant to a search warrant. He also moved to suppress evidence discovered in the contents of seven cell phones pursuant to a search warrant. The Superior Court denied Anderson's motions. On appeal, Anderson claims the search warrant for his residence lacked probable cause because it was largely based on uncorroborated information provided by a confidential informant and there was no nexus between any criminal activity and his residence. He also argues that the search warrant for the seven cell phones lacked probable cause and were not sufficiently particular or temporally limited. Anderson's claims are unavailing.

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[41] *Cooper v. State*, 228 A.3d 399, 404 (Del. 2020).

Search Warrant for 17 Oakley Court, Anderson's Residence

The affidavit of probable cause in support of the investigators' application for a search warrant for Anderson's residence set forth the following pertinent facts:

-On September 1, 2017, White coordinated a drug transaction with another person at a stash house used by White. Police observed White, accompanied by Anderson and William Wisher, leaving the stash house carrying a large bag. Four days later Wisher was arrested and found to be in possession of 13,000 bags of heroin.

-Police executed a search warrant at the stash house and discovered a small amount of cocaine and drug paraphernalia associated with cooking and packaging cocaine.

-Four different past proven reliable informants told police Anderson and White worked in conjunction with other members of a drug dealing organization to distribute illegal drugs in Wilmington.

- While Anderson was in Las Vegas, White contacted Anderson via phone and told him to place a large wager on a boxing match.

- Anderson had been indicted for Conspiracy to Commit Racketeering and had an outstanding Rule 9 warrant for his arrest.

-When police went to 17 Oakley Court to execute the Rule 9 warrant, one of the children present in the home said Frog hid a BB gun in the house.

-Anderson has an extensive criminal history and was a person prohibited from possessing a firearm.[42]

Performing the required four-corners analysis, the Superior Court concluded that there was sufficient information in the warrant for a magistrate to make a probable cause determination and to establish a nexus between Anderson's criminal activity and his residence. The court determined:

> Then I think the nexus facts are sufficiently set forth in Paragraph 8, when you look at all the other facts in the affidavit, which includes that FBI Agent Herron received information that Defendant Anderson was staying at 17 Oakley Court with a girlfriend, and that on October 27, the day of the search warrant, The FBI Strike Fore responded. Damon Anderson answered the door and was taken into custody, ...
>
> * * * *
>
> I think it's significant that one of the children there said that the defendant, going by the name of Frog, quote, hid, unquote, a BB gun. . .. It implies concealment of a weapon, although not technically a firearm or deadly weapon, at least by itself. . .. It's not the strongest nexus in the world, I'll say that. But I think it's more than sufficient under the caselaw.
>
> * * * *
>
> I think the defendant, at bottom line, has not met his burden to show that the warrant lacked sufficient probable cause.[43]

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[42] *See* A94-95.
[43] A148-49.

The court did not abuse its discretion in reaching the above conclusion.

When considering a challenge to a search warrant, a reviewing court is required to examine the affidavit to ensure that there was a substantial basis for concluding that probable cause existed.[44] "A determination of probable cause requires an inquiry into the 'totality of the circumstances' alleged in the warrant."[45] Notwithstanding the deference paid to the issuing magistrate, "the reviewing court must determine whether the magistrate's decision reflects a proper analysis of the totality of the circumstances."[46]

Here, the facts set forth in the warrant established that White coordinated a suspected drug transaction and was seen leaving a known stash house with Anderson and another individual on September 1, 2017. Police observed the group meet with several individuals, including William Wisher. Four days later Wisher was arrested and was in possession of 13,000 bags of heroin. Police corroborated and confirmed the information they possessed about the stash house when they executed a warrant and discovered cocaine and paraphernalia for cooking and packaging cocaine. Several past proven reliable informants told investigators that Anderson was involved in the drug trade with White. This information was corroborated by police

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[44] *Smith v. State,* 887 A.2d 470, 473 (Del. 2005).
[45] *Starkey v. State*, 2013 WL 4858988, at *3 (Del. Sept. 10, 2013) (citing *LeGrande v. State,* 947 A.2d 1103, 1008 (Del. 2008) (other citations omitted)).
[46] *Id.* (citing *LeGrande,* 947 A.2d at 1108).

observations of White and Anderson leaving the stash house with a large bag and eventually meeting William Wisher on September 1, 2017. The Las Vegas wager placed by Anderson for White, when viewed in context, was evidence of money laundering. Investigators confirmed that Anderson was living at 17 Oakley Court. When investigators went to 17 Oakley Court to execute the outstanding Rule 9 warrant for Anderson, one of the children present told them that Frog hid a BB gun. Anderson was a person prohibited from possessing a firearm because of his extensive criminal history.

The search warrant for 17 Oakley Court set forth sufficient facts necessary to establish probable cause. Anderson's association with White and their involvement in a criminal enterprise that sold illegal drugs in Wilmington, coupled with Anderson's extensive criminal history, and a child telling investigators that Anderson hid a BB gun inside 17 Oakley Court, when considered under the totality of the circumstances established probable cause to search Anderson's residence.

Search Warrant for the Contents of Seven Cell Phones

Anderson also argues the search warrant for the seven cell phones investigators recovered from his residence "did not meet the probable cause, temporal or particularity requirements for the warrant."[47] This claim is likewise unavailing.

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[47] Op. Brf. at 26.

The search warrant for the content of the phones articulated the identical facts used to procure the search warrant for 17 Oakley Court.[48] The warrant contained additional information indicating the seven phones found were discovered during the execution of the search warrant at 17 Oakley Court and that one of the phones discovered was used to contact White for the Las Vegas wager.[49]

The Superior Court determined the search warrant contained sufficient facts to establish probable cause, finding:

> [T]he issuance of the search warrant was proper because it was supported by probable cause. The affidavit provided a detailed account of the investigation thus far, which implicated Defendant at every turn.
>
> * * * *
>
> Here, police sufficiently documented the investigation into the criminal enterprise in which Defendant allegedly engaged. Defendant was seen with Dwayne White at White's stash location, and later with William Wisher a few days before Wisher was arrested and 13,000 bags of heroin were seized from Wisher's house. Further, White contacted Defendant via a cell phone which was later seized by police. White allegedly asked Defendant to engage in conduct which a court may reasonably infer—when viewed in a totality of the circumstances—was intended to launder money for the criminal organization. Lastly, and importantly, a grand jury had indicted Defendant just prior to the search warrant's issuance. This was stated in the search warrant application. "Racketeering" by its definition, is an ongoing enterprise.[50]

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[48] A124-26.
[49] A125-26.
[50] *State v. Anderson*, 2018 WL 6177176, at *3 (Del. Super. Nov. 5, 2018).

The court also found that the warrant satisfied the particularity requirement:

> The warrant limited the search to types of data pertinent to the investigation as supported by probable cause. This warrant does not contain the limitless request to search a large number of devices condemned in *Wheeler*[.] Nor are the seven cell phones vaguely connected to the crime, as the *Buckham* cell phone was. The categorical scope of Defendant's warrant satisfies the particularity requirement.[51]

However, the Superior Court considered the lack of a temporal limitation in the warrant "problematic," stating:

> In the case at bar, the Court believes the circumstances allowed for a more particularized description of the search and its scope than the warrant in fact provided. Investigators here "had available to them a more precise description of the alleged criminal activity[.]" The State established that alleged criminal activity occurred from the second week of August 2017 until the cell phones were seized on October 27, 2017. The warrant does not limit the search to that date range however. The limiting information was not in the warrant itself, merely the affidavit. . . . Thus, the warrant should have contained a temporal limitation in this situation.[52]

As a result of the lack of a temporal limitation in the warrant, the court partially granted Anderson's motion to suppress. Because the State established probable cause to believe criminal activity occurred from the second week of August 2017 until the time the seven cell phones were seized on October 27, 2017, the court

[51] *Anderson*, 2018 WL 6177176, at *4 (citing *Wheeler v. State,* 135 A.3d 282, 289-90, 307 (Del. 2016); *Buckham v. State,* 185 A.3d 1, 19-20 (Del. 2018)).
[52] *Id.* (citations omitted).

prohibited the State from introducing any evidence collected from the contents of the phones prior to August 12, 2017.[53]

Anderson principally relies on *State v. Westcott*[54] in support of his argument. *Westcott* is distinguishable. In *Westcott*, police applied for and received a search warrant to search the contents of three phones discovered in Westcott's apartment. Police believed Westcott had committed a shooting, received consent to search his apartment and discovered the phones along with heroin and marijuana.[55] In the application for a search warrant, police sought to review the contents of the phones sought to search "to look for physical evidence or confession of the shooting or the illegal distribution of heroin contained therein."[56] The Superior Court determined that the warrant failed to establish a nexus between the phones and any evidence of criminal activity, lacked particularity, and failed to provide a temporal limit for the search.[57]

Here, the search warrant established that at least one of the seven phones was used to place the Las Vegas wager for White. Moreover, the Superior Court correctly determined that the number of cell phones seized was significant, stating "in light of the totality of the circumstances, the discovery of seven cell phones in

[53] *Id.* at *5.
[54] *State v. Westcott*, 2017 WL 283390 (Del. Super. Jan. 23, 2017).
[55] *Id.* at *1.
[56] *Id.*
[57] *Id.* at *2-4.

this particular case suggested criminal activity."[58] The search warrant in this case did not suffer from a lack of nexus and particularity as was the case in *Westcott*. The Superior Court did not abuse its discretion when it denied Anderson's motion to suppress the evidence discovered in the contents of his seven cell phones.

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[58] *Anderson*, 2018 WL 6177176, at *3.

IV. THE SUPERIOR COURT CORRECTLY DENIED ANDERSON'S MOTION FOR JUDGMENT OF ACQUITTAL.

Question Presented

Whether the evidence presented at trial, viewed in the light most favorable to the State, supports any rational fact finder's guilty verdict.

Standard and Scope of Review

This Court reviews "the denial of a Motion for Judgment of Acquittal *de novo* to determine whether any rational finder of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt."[59] "In the absence of a motion for directed verdict or for judgment of acquittal notwithstanding the verdict, this Court reviews claims of insufficient evidence for plain error."[60]

Merits of the Argument

At the close of the State's case, Anderson moved for judgment of acquittal on Money Laundering and Attempt to Evade or Defeat Tax.[61] He did not move for judgment of acquittal on the Drug Dealing charge he now contests on appeal.[62] Anderson's claim on appeal essentially summarizes his previous arguments about

[59] *Hoennicke v. State*, 13 A.3d 744, 748 (Del. 2010) (citing *Gibson v. State,* 981 A.2d 554, 557 (Del. 2009)).
[60] *Swan v. State*, 820 A.2d 342, 358–59 (Del. 2003).
[61] A1526.
[62] A1526.

the prejudice he suffered as a result of his joint trial with Lloyd and White. In any event, there was sufficient evidence for a rational juror to conclude that Anderson was guilty of Money Laundering and Attempt to Evade Tax, and Anderson cannot demonstrate plain error with regard to his conviction for Drug Dealing.

Money Laundering and Attempt to Evade Tax

On appeal, Anderson contends "there was no credible evidence" that he committed Money Laundering and that "[t]he State did not introduce any evidence that [he] failed to report all income."[63] This claim lacks merit. The State introduced evidence discovered by police during the execution of the search warrant executed at Anderson's home that included thousands of dollars in sports wagering tickets, money orders, and documents reflecting Anderson's interest in a cleaning company.

At trial, Dontae Sykes, a fellow member of the drug dealing enterprise testified that he knew how members of the enterprise, including Anderson concealed the proceeds and assets of the criminal enterprise by using gambling, investment properties and LLCs.[64] According to Sykes, drug dealers use proceeds from their drug trade to legally gamble in order to "wash" the money and create a "paper trail."[65] Sykes also explained the use of LLCs to hide physical assets and money.[66]

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[63] Op. Brf. at 27-28.
[64] A1395-96.
[65] A1395.
[66] A1396.

Documents discovered in Anderson's home reflected he had an interest in a cleaning franchise that he operated with Jamar Farnum, a fellow member of the criminal enterprise.[67] Sgt. Barnes also provided context for some of the items of evidence discovered in Anderson's home. He explained how drug dealers use legal gambling and money orders as a way to "legitimize" their income derived from selling drugs.[68] The State also introduced evidence that demonstrated when Anderson was in Las Vegas, White directed him to place a large wager (that he later changed and increased) on a boxing match.[69]

Investigators discovered a W-2 form indicating Anderson worked at Five Below and made just over $16,000 in 2016.[70] Investigators also discovered designer sneakers worth $1750, a designer t-shirt worth $550.[71] Anderson travelled to Las Vegas to gamble, Miami to shoot a rap video, and Atlanta to watch a boxing match. He owned an expensive car, and appears in White's ledger, apparently owing White $8,000 in at least one entry. Simply put, Anderson's lifestyle reflected unexplained wealth, well beyond what he reported as his legitimate income.

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[67] A795-96.
[68] A807.
[69] State's Trial Exhibits 342-45.
[70] A796.
[71] A792-93.

"Though the evidence was primarily circumstantial, this Court does not require direct evidence to sustain a verdict."[72] This was a complex case involving several witness whose testimony explained the drug dealing enterprise, Anderson's role in the enterprise and how Anderson and other members of the criminal enterprise obscured, concealed and attempted to legitimize the proceeds from the drug dealing enterprise. When viewing the evidence presented in the light most favorable to the State, any rational juror could have convicted Anderson of Money Laundering and Attempt to Evade Tax.

Drug Dealing

Anderson also claims, "there was no credible evidence as to Drug Dealing Tier 4 Heroin."[73] He fails to develop this argument beyond stating "the jury heard much testimony regarding . . . Lloyd and White, not so with Anderson."[74] Because Anderson did not move for judgment of acquittal on the Drug Dealing charge, he must demonstrate actual prejudice and the error complained of "must be apparent from the face of the record."[75] Anderson fails to meet his burden.

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[72] *Swan*, 840 A.2d at 358 (citing *Robertson v. State,* 596 A.2d 1345, 1355 (Del.1991)).
[73] Op. Brf. at 27.
[74] Op. Brf. at 27.
[75] *Swan*, 840 A.2d at 358 (quoting *Wainwright v. State,* 504 A.2d 1096, 1100 (Del. 1986) (internal quotes omitted).

Anderson's sparse argument is simply a restatement of Anderson's complaint about his joint trial with Lloyd and White. At trial, Tyrone Roane testified that Anderson was a drug dealer and member of the criminal enterprise.[76] Anderson appears in White's drug ledger – owing him $8,000 for drugs.[77] On more than one occasion Roane personally observed Anderson selling drugs for White, who was at the top of the heroin trade in Wilmington.[78] Indeed, when White believed investigators were watching him, Anderson became the "legs" of White's drug dealing operation.[79] Dontae Sykes testified that Anderson worked with White, selling heroin.[80] When investigators executed a search warrant at Anderson's residence, they discovered drug paraphernalia and seven cell phones.[81] One of the recovered phones contained text conversations reflecting several drug transactions between Anderson and other individuals.[82]

Anderson fails to demonstrate plain error. The evidence presented at trial was more than sufficient for a rational juror to find Anderson guilty of Drug Dealing. There was no error plain or otherwise.

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[76] A983-984.
[77] State's Trial Exhibits 82-83.
[78] A1232.
[79] A984.
[80] A1391.
[81] A613-14.
[82] A1449; State's Trial Exhibits 264-70.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment below.

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Dated: September 23, 2020

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAMON ANDERSON,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 476, 2019
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

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STATE OF DELAWARE
DEPARTMENT OF JUSTICE

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DATE: September 23, 2020

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The undersigned certifies that on September 23, 2020, he caused the attached *State's Opening Brief* & Appendix to be delivered electronically via Lexis/Nexis File and Serve to the following person:

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