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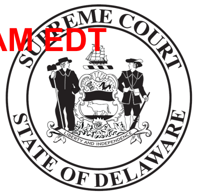

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE TERREROS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 435, 2022
	)	
	)	
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: June 14, 2022

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NATURE AND STAGE OF THE PROCEEDINGS

On February 17, 2020, a New Castle County grand jury indicted Jose Terreros ("Terreros") with Rape First Degree, Sexual Abuse of a Child First Degree, and Dangerous Crime Against a Child. A1; A11-13. On March 15, 2021, Terreros filed a motion to suppress evidence recovered from a search of his cell phone, which the Superior Court denied after a hearing. A4; A6. After a five-day trial, a jury convicted Terreros of Sexual Abuse of a Child and Dangerous Crime Against a Child. A7. The jury acquitted Terreros of Rape First Degree. A7. Terreros filed a post-verdict motion for a judgment of acquittal, which the court denied on November 29, 2021.[1] The Superior Court thereafter sentenced Terreros to an aggregate 60 years incarceration followed by decreasing levels of supervision. Ex. C to Op. Brf. Terreros filed a timely notice of appeal and an opening brief. This is the State's answering brief.

[1] *State v. Terreros,* 2021 WL 5577253 (Del. Super. Ct. Nov. 29, 2021).

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Terreros's motion to suppress evidence discovered in his phone pursuant to a search warrant. The warrant satisfied the particularity requirement and the application and affidavit of probable cause contained a temporal limitation of the search. In any case, the State initially introduced evidence of the incriminating search history through the victim's mother, who discovered the phone in her front yard, personally examined the search history, and reported it to police days after she initially reported Terreros's sexual abuse of her child.

II. Appellant's argument is denied. While inconsistent verdicts were not permitted under English Common Law, this Court has repeatedly recognized them. The Superior Court did not err when it denied Terreros's Motion for Judgment of Acquittal based on inconsistent verdicts. The court correctly applied the analysis set forth by this Court for addressing inconsistent verdict claims.

STATEMENT OF FACTS

In November 2019, Andrea Casillas-Ceja ("Casillas-Ceja") lived on E. Ayre Street in New Castle County with her boyfriend, Jose Terreros ("Terreros") and her five children. A269. One of her children, J.S., was four years old at the time. A269. On November 19, 2019, Casillas-Ceja, three of her children, and Terreros visited an orchard, went to dinner, and returned to their home that evening. A271. Casillas-Ceja took the children to bed – J.S. and her sister slept in a bunk bed in a bedroom they shared with Casillas-Ceja and Terreros. A271. After the children were in bed, Terreros told Casillas-Ceja he was thirsty and asked her to purchase him a bottle of water. A271. Casillas-Ceja went to a nearby store and returned about ten minutes later. A271. When she returned, Casillas-Ceja took a bottle of water to the bedroom and set it down. A273. J.S., who was in the bunk bed, approached the edge of her bed and told Casillas-Ceja, "Mom, Jose licked my cola," which Casillas-Ceja took to mean her vagina. A273. Casillas-Ceja immediately took the girls out of the home and called the police. A273. She did not see Terreros after that day, but discovered his phone in the grass outside the home four days later. A273; A276.

After finding Terreros's phone, Casillas-Ceja unlocked it and examined the search history. A276. According to Casillas-Ceja, "[Terreros] was looking up how you can detect if a little girl's been raped or molested, and how long saliva stayed on a human body, and how long fingerprints stay on clothing or bedding." A276.

Casillas-Ceja called the police again and gave them Terreros's phone. A278. At trial, Laurie Lane, a certified court interpreter, testified that she reviewed the searches from Terreros's phone, which were in Spanish. A292. Lane translated the following phrases (from Spanish to English) contained in the search history of Terreros's phone:

> What time does it take for the makers or traces in saliva to be erased?
>
> How the rape of a female child is detected.
>
> What are the possibilities that they can get fingerprints or prints from a piece of clothing?

A292-94. State's Trial Exhibits 4,5,6.

Following J.S.'s disclosure, she was examined by a Sexual Assault Nurse Examiner ("SANE") at A.I. DuPont Children's Hospital. A312. The SANE exam did not reveal any signs of injury and was otherwise "normal." A314. The SANE nurse testified that in her experience, it was unlikely that there would be any signs of physical injury because "perpetrators . . . usually attempt to do things that are not particularly hurtful because children like to tell you when they've been hurt." A314-16.

As part of the examination, the SANE nurse collected oral, buccal, and vaginal swabs. A314. Officers from the Newport Police Department collected J.S.'s jeans and underwear and swabbed them for subsequent DNA analysis. A328. The swabs collected by the SANE nurse and Newport PD were submitted to the Division of

Forensic Science, where they were tested by Lauren Rothwell ("Rothwell"), a senior forensic DNA analyst. A333. Rothwell's analysis of the swabs taken from J.S.'s jeans fly button and zipper area detected the presence of male DNA. A333. However, the swabs contained such a complicated DNA mixture that Rothwell did not attempt to identify the male contributor via comparison to known DNA profiles. A341.

At the time of Terreros's trial, J.S. was six years old. A243. She testified that Terreros was her mother's boyfriend and that he "licked [her] cola." A249. She said it happened at nighttime and that Terreros pulled her pants down and licked her with his tongue. A249. J.S. told her mother what had happened. A249. After J.S.'s disclosure, she was interviewed at the Children's Advocacy Center ("CAC"). A253. During the CAC interview, J.S. identified her vagina on an anatomical diagram and called it her "cola." Court Exhibit 1 at 11:02:22. J.S. also told the forensic interviewer that Jose "licked [her] cola." Court Exhibit 1 at 11:05:10.

Terreros testified at trial and denied sexually abusing J.S. A356. He admitted to the searches discovered in his phone and said he performed them "to inform him a little bit more about [his] case to see how [he could] defend [himself]." A356.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING TERREROS'S SUPPRESSION MOTION.

Question Presented

Whether the Superior Court abused its discretion when it denied Terreros's suppression motion related to the search warrant for his phone.

Standard and Scope of Review

"This Court generally reviews a trial court's denial of a motion to suppress for abuse of discretion. [T]he trial judge's factual findings [are reviewed] to determine whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous. To the extent that [this Court] examine[s] the trial judge's legal conclusions, [the Court] review[s] them *de novo* for errors in formulating or applying legal precepts. Appellate review of a challenge to a search warrant must examine the affidavit to ensure that there was a substantial basis that probable cause existed.[64] "[This Court] conduct[s] a *de novo* review to determine whether the totality of the circumstances, in light of the trial judge's factual findings, support a reasonable and articulable suspicion for the [search]."[2]

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[2] *Anderson v. State,* 249 A.3d 785, 795 (Del. 2021) (citations and internal quotation marks omitted).

Merits of Argument

Prior to trial, Terreros moved to suppress the evidence seized from his phone pursuant to a search warrant. The Superior Court denied Terreros's motion after a hearing. On appeal, Terreros claims the search warrant for his phone lacked a temporal restriction and was not sufficiently particular, thus rendering it a general warrant. He contends the warrant authorized "law enforcement to rummage through vastly expansive categories of data despite the absence of any conceivable probable cause or any direction as to what police would be looking for."[3] Terreros also argues that the partial suppression granted by the Superior Court is an illusory remedy in cases where the search warrant is a general warrant. Terreros's claims are unavailing.

The Search Warrant

The warrant application for Terreros's phone prepared by Newport Police Department Cpl. Jay Davidson requested authorization to search Terreros's phone for:

> Any and all messages, any and all messaging apps, all search history, all photographs, videos, GPS coordinates, incoming and outgoing calls from November 18, 2019 to November 23, 2019.[4]

[3] Op. Brf. at 11.
[4] A120.

The crime Cpl. Davidson identified in the application was Rape Second Degree (11 *Del. C.* § 722).[5] The affidavit of probable cause in support of Cpl. Davidson's search warrant application set forth the following pertinent facts:

> - On November 19, 2019, Col. Davidson was dispatched to 211 East Ayre Street to investigate the sexual assault of a four-year old. The victim disclosed that Terreros had pulled her pants down and licked her "cola."
>
> - The victim's mother found Terreros's phone in the front yard of 211 East Ayre Street, checked the "search history and found pornography, a search of how to detect if a little girl has been raped, how long saliva stays on a body, and a search of how long fingerprints stay on clothes/sheets/blankets."[6]

The last paragraph of Cpl. Davidson's affidavit states, "Your affiant requests a search warrant for the dates: 11/19/19 – 11/23/19 in order to obtain additional evidence pertaining to this investigation."[7] The search warrant signed by a magistrate authorized a search of Terreros's phone for:

> Any and all messages, any and all messaging apps, all search history, all photographs, videos, GPS coordinates, incoming and outgoing calls used or intended to be used for Rape 2nd by a person of Authority . . . .[8]

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[5] A120.
[6] A121-22.
[7] A122.
[8] A119.

The Superior Court concluded that the search warrant was not a general warrant finding, "the categories of things to be searched in the specifically identified cell phone are sufficient to pass muster under the Fourth Amendment as discussed in *Wheeler*[9] and *Buckham*."[10] [11] The court also addressed the lack of a temporal limitation on the face of the warrant and determined that although there was no evidence of the reason for the omission of the temporal limitation requested by Cpl. Davidson, "it was clear that a neutral third party understood that there was a temporal limitation or they would not have limited the extraction provided in that manner"[12] and "even if there were an overly broad search in terms of time that one of the proper remedies is suppress evidence outside the time period."[13] The court then denied Terreros's motion in its entirety: "I find the motion to suppress must be denied on all the grounds that I have set forth."[14]

The Search Warrant for Terreros's Phone Was Not a General Warrant

"General warrants, when employed by the government, afford officials 'blanket authority' to indiscriminately search persons, houses, papers, and effects."[15]

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[9] *Wheeler v. State,* 135 A.3d 282 (Del. 2016).
[10] *Buckham v. State,* 185 A.3d (Del. 2018).
[11] A207.
[12] A208.
[13] A208-09.
[14] A209.
[15] *Wheeler,* 135 A.3d at 296 (citations omitted).

As this Court has recognized, "[w]arrants directed to digital information present unique challenges in satisfying the particularity requirement, given the unprecedented volume of private information stored on devices containing such data. The expansive universe of digital and electronic information, and the intermingling data, complicates balancing the privacy interests of our citizens and the legitimate efforts of law enforcement in investigating criminal activity."[16] "A key principle distilled from the jurisprudence in this area is that warrants, in order to satisfy the particularity requirement, must describe what investigating officers believe will be found on electronic devices with as much specificity as possible under the circumstances."[17]

When reviewing a search warrant, "[c]ourts must avoid a hypertechnical approach by heeding the admonition that 'the Fourth Amendment's commands, like all constitutional requirements, are practical and not abstract.'"[18] "Affidavits and warrants 'must be tested by courts in a commonsense and realistic fashion.'"[19] And, "no tenet of the Fourth Amendment prohibits a search merely because it cannot be performed with surgical precision."[20] "Nor does the Fourth Amendment prohibit

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[16] *Wheeler,* 135 A.3d at 299 (citing *Riley v. California,* 573 U.S. 373, 402 (2014); *Kyllo v. United States,* 533 U.S. 27, 33–34 (2001) (other citations omitted)).
[17] *Id*. at 304.
[18] *United States v. Christine,* 687 F.2d 749, 760 (3d Cir. 1982)(quoting *United States v. Ventresca*, 380 U.S. 102 (1965)).
[19] *Id.*(other citation omitted).
[20] *Id.*

seizure of an item . . . merely because it happens to contain other information not covered by the terms of the warrant."[21]

Here, the search warrant for Terreros's phone satisfied the particularity requirement. It specifically identified the device to be searched, limited the categories of data to be searched and, when read in a common-sense way in connection with the supporting application and affidavit, had a temporal limit, which confined the search to a five-day span. Terreros contends, "[t]he absence of any conceivable probable cause to search huge categories of information, makes this warrant, a general warrant."[22] He is wrong. This was not a wide-ranging, top-to-bottom search of Terreros's digital universe. Indeed, Cpl. Davidson gave a "precise description of the alleged criminal activity that is the subject of the warrant."[23] Specifically, he sought evidence of Rape Second Degree, detailed the facts supporting that charge and more importantly the discovery of Terreros's incriminating searches by the victim's mother, demonstrating his consciousness of guilt. Other relevant evidence could also be found by searching the GPS coordinates of Terreros's phone, which could potentially establish that he was present at 211 East Ayre Drive on November 19, 2019. Moreover, the search was "appropriately narrowed to the relevant time period so as to mitigate the potential for

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[21] *Id.* (citing *United States v. Beusch,* 596 F.2d 871, 876-77 (9th Cir. 1979)).
[22] Op. Brf. at 14.
[23] *Wheeler*,135 A.3d at 305.

unconstitutional exploratory rummaging."[24] The dangers addressed by this Court in *Wheeler* were simply not present here.

In *State v. Anderson*,[25] the Superior Court partially denied a motion to suppress a search of seven cell phones based on the lack of a temporal limitation on the face of the warrant. The court addressed the issue as follows:

> 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.[26]

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 prohibited the State from introducing any evidence collected from the contents of the phones prior to August 12, 2017.[27] On appeal, this Court affirmed the Superior

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[24] *Id.*
[25] 2018 WL 6177176 (Del. Super. Ct. Nov. 5, 2018).
[26] *Anderson*, 2018 WL 6177176, at *3.
[27] *Id.* at *5.

Court's partial grant/denial of Anderson's motion to suppress the search of the seven cell phones.[28]

Here, as in *Anderson*, the warrant lacked the temporal limitation requested by Cpl. Davidson in his application, but it was clearly set forth in the body of the affidavit of probable cause. The Superior Court correctly determined that the temporal limitations were employed when data from the phone was searched.[29] Terreros nonetheless contends the court's findings were based on "unsupported representations about evidence."[30] However, any inaccurate statements made by the prosecutor, trial counsel, or the court do not impact the analysis or the result here.

The State concedes Cellebrite is not a phone company, it is an investigative tool used to extract data from cell phones. It appears that the prosecutor, trial counsel, and the court mistakenly conflated the terms "extraction" and "search." At the suppression hearing, the prosecutor stated:

> So the extractions that the State received were limited to the 18th to the 23rd of November. Practically speaking, it's the State's understanding that – and when we do have the entire cell-phone dump. Cellebrite is unable at this time to limit its scope to just those dates, but the extraction itself that we received of those search histories and the like, which were provided to the defense, are limited to the 18th to the 23rd of November.[31]

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[28] *Anderson,* 249 A.3d at 798.
[29] A208.
[30] Op. Brf. at 11.
[31] A195.

Trial counsel addressed the "extraction" as well:

> If . . . the software is being used to search cell phones pursuant to warrants is not capable searching only a portion of the cell phone, then whether the State is receiving the fruits of those searches or not, the cell phones are being searched in their entirety regardless of temporal limitations and perhaps they cull that data down to fit a temporal limitation, but the phone is being searched.[32]

The above immediately preceded the following exchange with the court:

> THE COURT: So I don't really think it's before me today though to address that issue because if I were to decide that on that very narrow issue in defendant's favor, I would have to find that all cell phone searches were impermissible under the Fourth Amendment.
>
> TRIAL COUNSEL: That's why I said I agree with the Court that is not the issue for the court in this case. That is just a comment I had based on a comment that the State presented to the Court during its presentation.
>
> THE COURT: It's an interesting issue, but I'm not going to address that today.
>
> TRIAL COUNSEL: Understood, Your Honor.
>
> THE COURT: It's beyond the scope of this hearing.

In any event, as Terreros conceded in the Superior Court, the extraction issue "is not the issue for the court in this case."[33] This Court recognized the difference between the two terms in *Taylor,* stating "[a]lthough the record is not entirely clear, investigators apparently *extracted almost all data* from Taylor's smartphones from

[32] A202.
[33] A202.

an eleven-year time span, and then *searched without restriction* for evidence of criminal conduct."[34] That was not the case here. While the record is not entirely clear, it appears that data was extracted from Terreros's phone and a search of that data was conducted within the limits set forth in the search warrant and the affidavit of probable cause. The tailored results were produced in an "Extraction Report." The Cellebrite "extraction" process cannot limit the data downloaded from a phone, however a search warrant can limit a search of the data extracted, which was the case here.

Partial Suppression is Not an Issue Here

Terreros argues that partial suppression is not the appropriate remedy in this case. He misapprehends the record and the Superior Court's ruling.

In *Anderson,* the Superior Court granted partial suppression of the data on the seven cell phones that was outside of the implied time limit set forth in the affidavit of probable cause.[35] This Court affirmed.[36] Here, the Superior Court did not grant partial suppression of the data from Terreros's phone. It denied his motion in its entirety and did not limit the State's introduction of evidence discovered pursuant to the search warrant.[37] The court correctly determined that although the warrant did

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[34] *Taylor v. State,* 260 A.3d 602, 616 (Del. 2021) (emphasis added).
[35] *Anderson*, 2018 WL 6177176, at *5.
[36] *Anderson,* 249 A.3d 785.
[37] A208-09.

not proscribe a temporal limitation, such a limitation was evident from Cpl. Davidson's application and affidavit, and the search was limited in accord with those temporal restrictions.[38]

Limited suppression of evidence is not available in the case of a general warrant.[39] As discussed above, this was not a general warrant, as was the case in *Taylor.* Here, the warrant did not authorize a top-to-bottom search of Terreros's digital universe. The warrant was limited to certain categories of data on a single device to search for evidence of Rape Second Degree and the warrant application and affidavit provided temporal parameters for the search. The lack of a temporal limitation on the face of the warrant did not render it a general warrant.[40] Thus, even if the Superior Court had granted partial suppression, as was the case in *Anderson,* it would have been the appropriate remedy.

Any Purported Error In Admitting Terreros's Search History Was Harmless

Even if this Court were to determine that the Superior Court erroneously admitted the search history obtained from a search of Terreros's phone pursuant to a search warrant, such error was harmless beyond a reasonable doubt. When evidence has been admitted erroneously, and the error implicates constitutional

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[38] A208.
[39] *Taylor*, 260 A.3d at 617.
[40] *See Anderson*, 2018 WL 6177176, at *4.

rights, the State must prove "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained."[41] Such was the case here.

Terreros was charged with Rape First Degree, Sexual Abuse of a Child First Degree, and Dangerous Crime Against a Child.[42] The following evidence was adduced at trial:

- Almost immediately after the sexual assault J.S. disclosed to Casillas-Ceja, that Terreros, "licked [her] cola," which Casillas-Ceja took to mean her vagina.[43] Casillas-Ceja immediately reported the sexual assault to police.[44]

- Casillas-Ceja discovered Terreros's phone in the grass outside the home four days after the sexual assault.[45] Casillas-Ceja unlocked the phone, examined the search history and discovered that "[Terreros] was looking up how you can detect if a little girl's been raped or molested, and how long saliva stayed on a human body, and how long fingerprints

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[41] *Taylor*, 260 A.3d at 618 (citing *Dawson v. State*, 608 A.2d 1201, 1204 (Del. 1992); *Johnson v. State,* 587 A.2d 444, 451 (Del. 1991); *Delaware v. Van Arsdall*, 475 U.S. 673 (1986)).
[42] A1; A11-13.
[43] A273.
[44] A273.
[45] A273; A276.

stay on clothing or bedding."[46] Casillas-Ceja called the police and gave them Terreros's phone.[47]

- The State introduced part of the extraction report that detailed searches made (in Spanish) by Terreros. A court interpreter translated the following contained in the search history of Terreros's phone:

> What time does it take for the makers or traces in saliva to be erased?
>
> How the rape of a female child is detected.
>
> What are the possibilities that they can get fingerprints or prints from a piece of clothing?[48]

- Male DNA was detected on swabs taken from J.S.'s jeans fly button and zipper area.[49]

- In a CAC interview conducted shortly after the sexual assault, J.S. disclosed that Terreros "licked [her] cola."[50] She identified her "cola" on an anatomical diagram in an area that would be consistent with a vagina.[51]

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[46] A276.
[47] A278.
[48] A292-94. State's Trial Exhibits 4,5,6.
[49] A333.
[50] Court Exhibit 1 at 11:05:10.
[51] Court Exhibit 1 at 11:02:22.

- At trial, J.S. testified that Terreros was her mother's boyfriend and that he "licked [her] cola."[52] She said it happened at nighttime and that Terreros pulled her pants down and licked her with his tongue.[53]

- At trial, Terreros denied sexually assaulting J.S., but acknowledged the searches discovered on his phone and claimed he wanted to better understand how to defend himself.[54]

The introduction of the search history via the court interpreter's reading of a portion of the extraction report did little if anything to advance the State's case and did not contribute to his conviction. The jury first learned about the search history in Terreros's phone through Casillas-Ceja's testimony. She had already told the jury what Terreros had been searching for on his phone when the State introduced the search history from the extraction report. This is not a case where the jury would have reached a different result had they not considered the evidence introduced from the extraction report. Indeed, the jury had evidence of Terreros's search history separate and apart from the extraction report. Given the overwhelming evidence of Terreros's guilt, including evidence of Terreros's search history as described by Casillas-Ceja, this Court can conclude beyond a reasonable doubt that the jury's

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[52] A249.
[53] A249.
[54] A356.

verdict would have been the same without the search history evidence seized from Terreros's phone.

II. THE SUPERIOR COURT CORRECTLY DENIED TERREROS'S MOTION FOR JUDGMENT OF ACQUITTAL.

Question Presented

Whether the Superior Court erred when it determined that Delaware law permits inconsistent verdicts in criminal cases.

Standard and Scope of Review

"In reviewing an inconsistent verdict claim, the Court must still test the sufficiency of the evidence supporting the conviction. When considering the sufficiency of the evidence, the standard is 'whether considering the evidence in the light most favorable to the prosecution, including all reasonable inferences to be drawn therefrom, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"[55]

In his Opening Brief, Terreros contends the State has waived any counterargument to his English common law claim.[56] Not so. In the penultimate paragraph of his Motion for Judgment of Acquittal Terreros argued: "Delaware citizens are guaranteed the enjoyment of all trial rights as they existed at English common law, notwithstanding subsequent modification of the federal right to a jury trial."[57] Terreros did not further develop this single-sentence claim. The State did

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[55] *Graham v. State,* 2017 WL 4128495, at *1 (Del. Sep. 18, 2017) (quoting *Forrest v. State*, 721 A.2d 1271, 1279 (Del. 1999) (other citation omitted).
[56] Op. Brf. at 21.
[57] A417.

not address Terreros's undeveloped claim in its response and the Superior Court likewise did not address the English common law claim when it denied Terreros's Motion for Judgment of Acquittal. In any event, an analysis of the English common law was not necessary to decide the issues Terreros fully presented to the Superior Court. Rather than present his developed claims on appeal, Terreros simply seeks to develop his English common law claim in this Court while simultaneously contending that the State should be prevented from addressing his newly developed claim on appeal.

Merits of the Argument

After the jury acquitted Terreros of Rape First Degree, Terreros moved for judgment of acquittal on Count II, Sexual Abuse of a Child By a Person In a Position of Trust and Authority, and Court III, Dangerous Crime Against a Child.[58] In his motion, Terreros argued that the "only rational explanation" for the inconsistent verdict was that the jury had a reasonable doubt about whether Terreros had engaged in sexual intercourse with J.S.[59] He also contended that because inconsistent verdicts were invalid at common law, they are thus invalid under the Article I, section 4 of the Delaware Constitution.[60] On appeal, Terreros attempts to ground his state

[58] A401-402.
[59] A405.
[60] A415.

constitutional claim in the English common law tenet that prohibited inconsistent verdicts. His claim is unavailing.

When the Superior Court denied Terreros's motion for judgment of acquittal, it concluded: "[t]he Court has no hesitance in concluding that there was sufficient evidence upon which a reasonable jury could have convicted the defendant of the two charges of conviction. The fact that he was acquitted on another charge on which he might also have been convicted is either due to lenity, error, or some other factor."[61] The court's decision was well-reasoned and grounded in firmly established Delaware law.

As the Superior Court noted, there are two lines of cases that address inconsistent verdicts, "[t]he '*Powell-Tilden*' line of cases, which consider only the sufficiency of the evidence and attribute inconsistent verdicts to jury lenity, and the '*Johnson-Priest*' line of cases, which concern the effect of inconsistent verdicts on "predicate-compound" crimes. While the *Johnson-Priest* line of cases offer potential relief for a defendant who has received inconsistent verdicts, the *Powell-Tilden* line does not."[62] The court determined that Rape First Degree and Sexual Abuse were not predicate-compound crimes similar to PFDCF and underlying predicate charges and thus applied the *Powell-Tilden* line of cases, "which trace their

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[61] *Terreros*, 2021 WL 5577253, at *6.
[62] *Id.* at *2.

lineage back to the 19th century, [and] hold that, if an inconsistent verdict, however determined, is supported by sufficient evidence, then it must be accorded the same deference a consistent verdict enjoys."[63] The court's determination was correct.

This Court has stated, "[i]nconsistency alone is an insufficient basis for challenging a jury verdict"[64] and "[i]f the inconsistency can be explained in terms of jury lenity, the convictions may stand."[65] "[T]he controlling standard for testing a claim of inconsistent verdicts is the rule of jury lenity ... coupled with the sufficiency of evidence standard."[66] "Under the rule of jury lenity, this Court may uphold a conviction that is inconsistent with another jury verdict if there is legally sufficient evidence to justify the conviction."[67]

Here, the Superior Court correctly applied the standard set forth by this Court. While the verdicts may have been inconsistent, they were supported by sufficient evidence, which the Superior Court outlined as follows:

> The child victim in this case testified, with considerable trepidation, that the defendant committed the acts in question. The interviewer from the Children's Advocacy Center testified to the child's statements to that office. The Defendant's internet searches were introduced into evidence, as was his disappearance on the night of the incident when

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[63] *Id*. at *4.
[64] *Graham*, 2017 WL 4128495, at *1.
[65] *Tilden v. State,* 513 A.2d 1302, 1306 (Del. 1986).
[66] *Tilden,*513 A.2d at1307.
[67] *Graham* 2017 WL 4128495, at *3 (quoting *King v. State*, 2015 WL 5168249, at *2 (Del. Aug. 26, 2015) (internal quotes omitted) (other citation omitted).

> mother called the police. The Court has no hesitance in concluding that there was sufficient evidence upon which a reasonable jury could have convicted the defendant of the two charges of conviction.[68]

In sum, the evidence presented at trial was more than sufficient for a rational juror to find Terreros guilty of Sexual Abuse of a Child By a Person In a Position Of Trust and Authority and Dangerous Crime Against a Child.

Terreros has failed to demonstrate that the Superior Court erred by correctly applying settled Delaware law to his inconsistent verdict claim. While not expressly doing so, Delaware courts have rejected (or abandoned) the English common law prohibition against inconsistent verdicts as evidenced by well-developed jurisprudence which permits inconsistent verdicts in certain instances. Terreros's attempt to have this Court abandon its recognition of inconsistent verdicts in favor of English common law fails.

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[68] *Terreros,* 2021 WL 5577253, at *6.

CONCLUSION

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

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Dated: June 14, 2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE TERREROS,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 435, 2022
	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 5,054 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ *Andrew J. Vella*
Chief of Appeals
ID No. 3549

DATE: June 14, 2023