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Case Number 220,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

EZEKIEL TAMBA,	)	
	)	
Defendant – Below,	)	
Appellant,	)	
	)	
v.	)	**No. 220, 2023**
	)	
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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DATE: November 13, 2023

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NATURE AND STAGE OF THE PROCEEDINGS

On May 9, 2022, a New Castle County Grand Jury returned a four-count indictment against Ezekiel Tamba ("Tamba") alleging Attempted Murder First Degree, Possession of Firearm During the Commission of a Felony ("PFDCF"), Carrying a Concealed Deadly Weapon ("CCDW"), and Resisting Arrest. A01; A016-17. After a three-day jury trial, Tamba was convicted of all charges.[1] A05. On June 2, 2023, the Superior Court sentenced Tamba to an aggregate 18-year term of incarceration followed by decreasing levels of supervision. A05; Sentence Order (attached to *Op. Brf.*). Tamba has appealed. This is the State's Answering Brief.

[11] The State entered a *nolle prosequi* on the Resisting Arrest charge on March 1, 2023. A01.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. The trial court properly admitted Telyka Brooker-Parquet's statement to Det. David DiNardo, which was recorded on his body worn camera. The statement, admitted as a present sense impression, was non-testimonial under *Crawford v. Washington*. Brooker-Parquet's brief statement describing the clothing worn by a person she believed was involved in an altercation in a Walmart parking lot, was made in response to Det. Dinardo's questions that he asked primarily to meet an ongoing emergency.

II. Appellant's argument is denied. The Superior Court did not abuse its discretion by permitting the State to elicit Jael Peralta's testimony recounting a conversation she had with Tamba's girlfriend, Theodosia Kollie. Kollie's statement to Peralta that she hoped Tamba did not use her gun was relevant because it was material and probative of an issue (identity) raised by Tamba.

III. Appellant's argument is denied. The Superior Court did not abuse its discretion or otherwise err when it admitted Brooker-Parquet's recorded statement or Jael Peralta's testimony regarding her conversation with Theodosia Kollie. Because there was no error in admitting the statement or testimony, there can be no cumulative error.

STATEMENT OF FACTS

On January 10, 2022, Detective David DiNardo from the New Castle County Police Department ("NCCPD") was in his patrol car in New Castle, Delaware, when a DART bus pulled up and the driver told him that there was a man in the nearby Walmart parking lot with a gun. A051-53. According to Det. DiNardo, it was "a serious situation, a person with a gun in a public spot." A053. Det. DiNardo immediately drove to the Walmart parking lot, where he was the first officer on the scene. A054; A069. When he arrived, Det. DiNardo observed a minivan with a damaged windshield driving through the lot. A054. In an effort to stop the minivan, Det. DiNardo activated his emergency equipment and approached the minivan, which rolled backwards and hit Det. DiNardo's patrol car. A054. Det. DiNardo contacted the driver, later identified as Dacosta Harry ("Harry"), who appeared disoriented, had a bruised and bloodied face, and blood on his chest. A057. At some point, Det. DiNardo called for an ambulance to take Harry to the hospital. A063.

When Det. DiNardo initially drove into the Walmart parking lot, a woman, later identified as Telyka Brooker-Parquet ("Brooker-Parquet"), waved him down and said she had seen what had happened. A few minutes after encountering Harry, Det. DiNardo returned and spoke with Brooker-Parquet. A061. Their interaction was captured on Det. DiNardo's body worn camera. State's Trial

Exhibit 13. Brooker-Parquet told Det. DiNardo that she observed a person in the parking lot arguing with a person inside a vehicle and that the person in the vehicle kept trying to drive away. State's Trial Exhibit 13. She described the person outside of the vehicle as a black male in his early twenties wearing a black "puffer" coat and sunglasses. State's Trial Exhibit 13. Brooker-Parquet advised Det. DiNardo that the person outside of the car had fled from the scene after the argument. State's Trial Exhibit 13. Det. DiNardo told Brooker-Parquet to remain at the scene because detectives from the Delaware State Police, who were handing the investigation, might want to speak with her. State's Trial Exhibit 13.

At trial, Harry testified that he went to the Walmart to pick up medication and cleaning supplies for his job working with people with disabilities. A079; A097-99. After leaving the Walmart, Harry returned to his minivan in the parking lot. A080. When Harry got into the minivan, "a guy knocked on [the] window with a firearm and let it go off." A080. His assailant then asked for money and tried to open the door to the minivan. A080. At that point, Harry "caught a shot in the face," and was unable to see. A080. Harry closed and locked the door, and the shooter continued to shoot at Harry, grazing his neck. A080. Harry described his attacker as a 24-25-year-old male with dark skin wearing a black covering on his head, a black jacket, and blue jeans. A081. He had never seen the person before. A081. When shown surveillance footage from inside the Walmart (State's Trial

Exhibit 9), Harry identified a man wearing a dark jacket, jeans, and sunglasses, pushing a baby stroller in the lobby of the Walmart as the person who shot him. A086. As a result of the shooting, Harry had a bullet lodged in his skull, lost vision in one eye, and has severely diminished vision in his other eye. A093; A0318.

Delaware State Police Detective Brian Timmons ("Det. Timmons"), the chief investigating officer, collected and reviewed surveillance video from the Walmart. A0116-17. The surveillance videos played for the jury depict a man with a black jacket and jeans entering the Walmart lobby area with a baby stroller as Harry exits, and later outside of the Walmart, in the parking lot approaching or directly next to Harry's car. A0122-30; State's Trial Exhibits 15-22, 34.

Theodosia Kollie ("Kollie"), Tamba's girlfriend, testified that she was working at the Walmart on January 10, 2022, and that she spoke to the police about an incident that occurred earlier that day. A0200. Kollie's interview with police had been recorded and the State played the interview pursuant to 11 *Del. C.* § 3507. A0208; Court Exhibit 2A. Kollie told police that she was working at Walmart and Tamba came into the store with their infant child. Court Exhibit 2A. She sent Tamba to get a mask due to COVID concerns and he left the child at the customer service desk with a co-worker, later identified as Jael Peralta ("Peralta"). Court Exhibit 2A. When Tamba failed to return, Kollie called him and he said he

was at a nearby bus stop and told her to bring the infant out to him. Court Exhibit 2A. Peralta agreed to take the infant out to Tamba. Court Exhibit 2A. In the interview, Kollie said she had never seen Tamba with a gun. Court Exhibit 2A.

At trial, Kollie identified the man wearing a dark jacket and jeans depicted in surveillance clips from Walmart (State's Trial Exhibits 20, 9), as Tamba. A0210-11. Harry had previously identified the person depicted in State's Trial Exhibit 9 as the person who shot him. A086.

Kollie also testified that she did not have guns in her apartment to which Tamba would have access. A0212; A0340. When asked why she would have told a coworker that she was scared that Tamba may have used a gun that she had and that it could affect her status in the Army, Kollie flatly denied having made the statement, calling it a lie. A0213.

Peralta testified that she was working at the Customer Service desk in the Walmart when Tamba came in with a baby in a stroller. A0224. Tamba told Peralta to watch the baby "real quick" while he went outside to smoke a cigarette and left immediately. A0225. When Tamba failed to return, Peralta took the infant to Kollie, who called Tamba, and he told Kollie that he was across the street and would be right back. A0227. After talking to Kollie, Peralta agreed to take the baby outside to Tamba. A0228. Peralta drove to meet Tamba, who was on the sidewalk outside of the Walmart. A0230. Tamba appeared "scared [and]

nervous." A0230. He told Peralta to give him a ride and got in the car. A0230. As Perlata was driving, a police car drove by, Tamba looked scared and "he put his seat a little bit down and just told [her] to keep going." A0230. Tamba was wearing a dark jacket and his hands were in the jacket the entire time he was in the car. A02321. Peralta also identified Tamba from a still shot of the surveillance video (State's Trial Exhibit 73). A0233. Peralta dropped off Tamba and the infant at the Community Plaza. A0231.

Peralta, who was also interviewed at the police station, testified that she spoke with Kollie while at the police station. A0238. Kollie told Peralta that she was scared, and she didn't know if Tamba "did it or not or if he did, she didn't know what gun he used." A0239. She was concerned that Tamba had used her gun and that it would impact her status in the Army. A0239.

ARGUMENT

I. THE SUPERIOR COURT PROPERLY ADMITTED TELYKA BROOKER-PARQUET'S STATEMENT CAPTURED ON DETECTIVE DINARDO'S BODY WORN CAMERA.

Question Presented

Whether the Superior Court abused its discretion or otherwise erred when it admitted into evidence Telyka Brooker-Parquet's statement captured on Det. DiNardo's body worn camera.

Standard and Scope of Review

This Court reviews a trial court's decision to admit evidence based on an exception to the hearsay rule for abuse of discretion.[2] To the extent that an evidentiary ruling pertains to an alleged constitutional violation, this Court's review is *de novo*.[3]

Merits of the Argument

Tamba claims that the Superior Court abused its discretion in admitting a recording of hearsay statement made by Telyka Brooker-Parquet, describing an argument between two individuals in the Walmart parking lot and providing a

[2] *Pressey v. State*, 25 A.3d 756, 758 (Del. 2011) (citations omitted).
[3] *Jones v. State*, 940 A.2d 1, 9-10 (Del. 2007) (citing *Johnson v. State*, 878 A.2d 422, 427 (Del. 2005)).

description of a man arguing with a person inside a minivan.[4] At trial, Tamba conceded that Brooker-Parquet's statement qualified as a present sense impression under D.R.E. 803(1).[5] Tamba nonetheless contends, "Detective DiNardo's body cam recording of the hearsay witness's observations were for testimonial purposes."[6] Thus, Tamba argues, "[Det. DiNardo's] investigative intent resulted in a testimonial statement for the hearsay witness, and admission of that hearsay statement violated [his] Sixth Amendment right to confront all witnesses offering testimony against him."[7] Tamba's claim is unavailing.

Under D.R.E. 801(c), a statement is hearsay if it is made by a non-testifying declarant and offered into evidence to prove the truth of the matter asserted.[8] "A hearsay statement is not admissible except as provided by law or the Delaware Rules of Evidence."[9]

In Tamba's case, the State did not call Brooker-Parquet as a witness and expressed its intention to play her statement captured on Det. DiNardo's body worn camera.[10] Tamba objected to its admission.[11] The trial judge viewed Det.

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[4] State's Trial Exhibit 13.
[5] A023; *Op. Brf*. at 6.
[6] *Op. Brf*. at 7.
[7] *Op. Brf.* at 7.
[8] D.R.E. 801(c).
[9] *Taylor v. State*, 76 A.3d 791, 800 (Del. 2013); D.R.E. 802.
[10] The State did not call Brooker-Parquet "because of the anxiety she ha[d] expressed." A022.
[11] A022.

DiNardo's body worn camera recording of Brooker-Parquet's statement outside the presence of the jury to determine whether the statement was admissible and concluded:

> Having just reviewed that statement which is a couple of minutes long, and begins with, really, Miss Brooker-Parquet seemingly very excited about what happened, obviously acting under the stress to a certain extent of what had just happened, there is a police officer who has been identified as Detective DiNardo who has a body cam on and their interaction, the Court views, is not being the taking of the testimonial statement. I think this falls squarely under – basically, *Warren* talks a bit about the confrontation clause issues in that 911 recording situation. And [*Urquhart v. State*], a 2016 decision by the Delaware Supreme Court, also speaks to it.
>
> * * * *
>
> It does not seem at this point that that is the specific nature of this interaction, there is some questioning to gather information. It is clear from the fact that an ambulance is just rolling up, this is within the few minutes of the police coming in contact with the alleged victim in this case, getting medical help for him, but also knowing that there is a person out and about who has, by all accounts, it appeared, simply shot someone in a parking lot for no apparent reason, or whether it was an apparent reason, that person is fleeing.
>
> The fact that it seems to be just, say, kind of a random act of violence is more - - makes it even more important that the police attempt to get the information to identify who that might be, are there other people in public who may be in danger of that person who has fled the scene, obviously with a firearm.
>
> So it does seem that Detective DiNardo's purpose there is not to gather evidence of the past for purposes of criminal prosecution and therefore taking it more towards the testimonial bucket, but to address what was going on at the time, get information from an eyewitness who had been there as to who and what he should be looking for, rather than simply to learn what happened in the past.

> For those reasons the Court finds first, and both sides seem to be in full agreement, that these would be present-sense impression statements but whether or not there is a confrontation clause issue that would otherwise suggest they should not be admitted, the Court finds there is not.
>
> Therefore, the video recording that was just played for the Court will be admissible without the presentation of Miss Brooker-Parquet as a hearsay statement under 803(1) and one that does not implicate any confrontation clause issue.[12]

Present Sense Impression

A present sense impression is defined as "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter."[13] "To qualify as a present sense impression, the statement must satisfy the following requirements: '[t]he declarant must have personally perceived the event described; the declaration must be an explanation or description of the event, rather than a narration; and the declaration and the event described must be contemporaneous.'"[14] "Contemporaneous statements do not have to occur at precisely the same moment in time as the triggering event, but must occur shortly thereafter in response to the event."[15] Here, the trial judge determined (and Tamba agreed) that the Brooker-Parquet's

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[12] A032-35.
[13] D.R.E. 803(1).
[14] *Taylor v. State*, 76 A.3d 791, 800 (Del. 2013) (quoting *Warren v. State*, 774 A.2d 246, 251 (Del. 2001) (other citations omitted)).
[15] *Id.* (quoting *Green v. St. Francis Hosp., Inc.*, 791 A.2d 731, 736 (Del. 2002) (internal quotes omitted)).

statement to Det. DiNardo was as a present sense impression.[16] On appeal, Tamba appears to concede that the Superior Court did not abuse its discretion when it made the preceding conclusion.

Crawford Claim

Tamba, however, argues that the Superior Court incorrectly determined that Det. Brooker-Parquet's statement was non-testimonial because Det. DiNardo's purpose in taking her statement was to investigate the crime – not "hot pursuit."[17] He is wrong.

In *Crawford v. Washington*, the United States Supreme Court held that the Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination."[18] The Court later clarified the meaning of "testimonial" in *Davis v. Washington*, holding:

> Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.[19]

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[16] A035.
[17] Op. Brf. at 7.
[18] 541 U.S. at 53-54.
[19] 547 U.S. 813, 822 (2006).

This Court addressed the same claim made by Tamba in *Nalley v. State*.[20] In *Nalley*, the police conducted a traffic stop of a car that Nalley was driving.[21] During the stop, Nalley drove away and fled into a nearby neighborhood.[22] As police were searching the neighborhood for Nalley, "a neighborhood bystander yelled that the driver had run between the yards and over towards Cynthia. That bystander also shouted that the individual who left the truck was a black male, wearing a white t-shirt and shorts."[23] The bystander, who was never named, did not testify at trial.[24] However, the bystander's statement was admitted at trial as an excited utterance.[25] The Court determined that the Superior Court did not abuse its discretion admitting the hearsay statement in evidence as an exited utterance.[26] Addressing Nalley's *Crawford* claim, the Court found:

> [I]n the present case, a person hurriedly fleeing from a car in a neighborhood followed by police officers at night could reasonably

[20] 2007 WL 2254539 at * 2.

[21] *Id.* at *1.

[22] *Id.*

[23] *Id.*

[24] Id.

[25] *Id.* at *2.

[26] *Id.* at *3.

> prompt an excited utterance from local residents. Therefore, we find the bystander's statements to be nontestimonial excited utterances that are admissible in accordance with the holding in *Davis.*[27]

More recently, this Court addressed the same issue in *Urquhart v. State.*[28] In that case, the Court determined that an unidentified woman's statement to police describing a fleeing suspect's appearance and direction of travel qualified as both a present sense impression and an excited utterance and was nontestimonial under *Crawford* and *Davis*.[29] The Court defined testimonial statements as follows:

> A statement is testimonial "when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."[30]

The witness's statement in *Urquhart* "assist[ed] [the officer] in an ongoing emergency 'rather than simply to learn what happened in the past.'"[31] Consequently, the Court found that the statement was not testimonial and therefore did not implicate the Confrontation Clause.[32] Such was the case here.

The Superior Court correctly determined that Det. DiNardo was responding to an emergent situation and gathering information. At the time DiNardo spoke with Brooker-Parquet, Harry had been shot in a public parking lot moments before,

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[27] *Id.* at *4.
[28] *Urquhart v. State*, 2016 WL 768268, at *3 (Del. Feb 26, 2016).
[29] *Id.* at *3.
[30] *Id*. (quoting *Davis,* 547 U.S. at 822) (other citation omitted).
[31] *Id*. (quoting *Davis,* 547 U.S. at 822 and citing *Nalley,* 935 A.2d 256)
[32] *Id*.

the suspect had fled and not been captured, and an ambulance was arriving on scene to attend to Harry. The fact that Det. DiNardo did not broadcast Brooker-Parquet's description of the suspect over the radio is of no moment. This was a developing situation in which DiNardo was gathering preliminary information "from an eyewitness who had been there as to who and what he should be looking for, rather than simply to learn what happened in the past."[33] Indeed, the nontestimonial nature of the statement is borne out by Det. DiNardo telling Brooker-Parquet to remain at the scene because officers from Delaware State Police might want to talk to her.[34] In other words, this was not Det. DiNardo's investigation for NCCPD – it was a Delaware State Police case and they would conduct the investigation and gather information about past events to support the prosecution of a criminal case. Det. DiNardo's primary purpose in speaking to Brooker-Parquet was not to establish or prove past events. Brooker-Parquet's statement was non-testimonial under *Crawford*, *Davis*, and *Urquhart*, and its admission did not violate Tamba's Sixth Amendment right to confrontation.

[33] A034-35.
[34] State's Trial Exhibit 13.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT PERMITTED JAEL PERALTA TO TESTIFY ABOUT A CONVERSATION SHE HAD WITH TAMBA'S GIRLFRIEND, THEODOSIA KOLLIE.

Question Presented

Whether the Superior Court abused its discretion when the trial judge permitted Jael Peralta to testify about a conversation she had with Theodosia Kollie, during which Kollie expressed her concern over whether Tamba used her gun.

Standard and Scope of Review

"This Court reviews a trial court's decision regarding the admission of evidence, including a determination of relevancy under D.R.E. 401, under an abuse of discretion standard."[35]

Merits of the Argument

Tamba claims that the Superior Court abused its discretion when it permitted Peralta to testify about a conversation with Kollie during which Kollie expressed her concern that Tamba may have used "her" gun. He contends Kollie's statement

[35] *Robinson v. State*, 1996 WL 69797, at *3 (Del. Jan. 29, 1996) (citing *Tice v. State*, 624 A.2d 399, 401 (Del. 1993); *Mercedes-Benz v. Norman Gershman's Things to Wear, Inc.*, 596 A.2d 1358, 1366 (Del. 1991)).

to Peralta was irrelevant and deprived him of a right to a fair trial. Tamba's argument is unavailing.

At trial, the State informed the Court and Tamba that it planned to introduce a statement made by Kollie to Peralta after being interviewed at Troop 2 in which Kollie said, "I really hope he didn't use my gun that's in the apartment."[36] Tamba's counsel objected and argued that Kollie's statement was "not relevant to what Mr. Tamba is accused of."[37] The Superior Court disagreed and determined:

> The relevance of the question is that it places, it indicates that Mr. Tamba had access to a gun. I believe that's the relevance that the State is putting in there. How Miss Kollie expressed that and that is that there was a gun in her home that he might have access to is in the form of that statement but implicitly and inferentially in that statement is I have a gun and he would have access to it, or bottom line, he would have had access to a gun to do something like this.
>
> That's highly relevant in this case. You raised the issue of identification, so the fact that he is a person who would have access to a gun is one more little piece of evidence that goes to that, and so I'm going to allow the State certainly to ask Miss Kollie the question and how that plays out is completely up to them.[38]

Here is how it played out:

> PROSECUTOR: Ma'am, you said in your statement that you [had] never seen Ezekiel with guns, do you have guns in your apartment that Ezekiel may have had access to?
>
> KOLLIE: No, sir.

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[36] A0194.
[37] A0195.
[38] A0196.

> PROSECUTOR: So why would you tell somebody else that you worked with at Walmart after you were at Troop 2, that you were scared that he may have used your gun that you had and that that may affect your status in the Army.
>
> KOLLIE: That's a lie. I told the person that I haven't seen him with a gun and I don't think he did it or he has a gun because I work in the Army, I don't have a weapon, that's what I told her.[39]

When Peralta testified, the following exchange occurred:

> PROSECUTOR: Miss Peralta, did you talk to Theodosia at the police station after this incident happened?
>
> PERALTA: Yes.
>
> PROSECUTOR: What did she say to you?
>
> PERALTA: She basically told me that she was scared because she is in the Army – well, I don't know if she is or not, but at that moment she was in the army and she was very scared because she didn't know if he did it or not or if he did, she didn't know what gun he used. She was scared that he used her gun and that was it.[40]

At trial, Tamba objected to Peralta's testimony, but did not object to direct questions to Kollie about whether there was a gun in the apartment.[41] It appears that Tamba argued Kollie's statement that there was not a gun in the apartment would have been relevant, but her statement that she was concerned that Tamba may have used her gun was not relevant and therefore inadmissible. In any event,

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[39] A0212-13.

[40] A0238-39. At that point, Tamba reprised his earlier objection based on relevancy.

[41] Trial counsel stated: "I don't object to the question to Miss Kollie, was there a gun in the apartment." A0197.

Kollie's statement to Peralta was relevant under D.R.E. 401 and therefore admissible.

Under D.R.E. 402, relevant evidence is admissible.[42] D.R.E. 401 defines relevant evidence as "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 than it would be without the evidence."[43] This Court has stated that "[t]he definition of relevance encompasses materiality and probative value."[44] "Materiality looks to the relation between the propositions for which the evidence is offered and the issues, or ultimate facts, in the case."[45] Evidence has probative value if it affects the probability that the fact is as the party offering the evidence asserts it to be.[46]

Here, Kollie's statement to Peralta was relevant to demonstrate Tamba may have had access to a gun. This was a case in which a gun was used to shoot Harry, and Tamba raised the issue of identity. In his opening statement, Tamba's counsel stated:

> I want to highlight to you, ladies and gentleman, two issues which I submit to you the State will not be able to overcome in its case. That is, number one, there will be no identification of the shooter beyond a

[42] D.R.E. 402.
[43] D.R.E. 401.
[44] *Lilly v. State*, 649 A.2d 1055, 1060 (Del. 1994) (citations omitted).
[45] *Getz v. State*, 538 A.2d 726, 731 (Del. 1988).
[46] *Id.*

> reasonable doubt. There will not be an identification that persuades you beyond a reasonable doubt.[47]

As the Superior Court correctly noted to Tamba's counsel, "[y]ou raised the issue of identification, so the fact that he is a person who would have access to a gun is one more little piece of evidence that goes to that . . . . The fact that [Kollie] admitted that she had a firearm in her apartment and the fact that she had indicated that he may have had access to it albeit her hope is that he certainly did not do that and take control of a gun that was in her apartment, is relevant."[48] Kollie's statement was material and probative on the issue of whether Tamba had access to a weapon, which in turn, went to the identity issue, which Tamba placed squarely before the jury.

The Superior Court also correctly determined that Kollie's statement to Peralta was admissible under D.R.E. 613 as a prior inconsistent statement.[49] Under D.R.E. 613(b), "[e]xtrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon...."[50] Here, Kollie's statement to Peralta qualified for admission under D.R.E. 613. The statement was inconsistent with her prior testimony that she did

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[47] A047.
[48] A0196-97.
[49] A0234-37. Although Tamba objected to Kollie's statement to Peralta on relevancy and hearsay grounds, he has not raised the hearsay issue on appeal.
[50] D.R.E. 613(b).

not have a gun in her apartment and, as the trial judge noted, Kollie "was given the opportunity to explain or deny the statement [to Peralta] and [defense counsel] was given the opportunity to cross examine her about it."[51] A trial judge is vested "with broad discretion regarding the introduction of prior inconsistent statements for impeachment purposes . . . ."[52] In Tamba's case, the Superior Court did not abuse its discretion in by admitting Kollie's statement to Peralta into evidence.

[51] A0235.
[52] *Robinson v. State*, 3 A.3d 257, 264 (Del. 2010).

III. TAMBA'S CLAIMS ALL FAIL, SO THERE CAN BE NO CUMULATIVE ERROR.

Question Presented

Whether several errors cumulatively resulted in an unfair trial.

Standard of Review

This Court reviews a claim that errors cumulatively resulted in an unfair trial for plain error.[53]

Merits of the Argument

Tamba argues the Superior Court erred in admitting Brooker-Parquet's statement and Peralta's testimony regarding her conversation with Kollie, and claims those errors cumulatively deprived him of the right to a fair trial "When there are multiple errors in a trial, this Court weighs their cumulative effect to determine if, combined, they are "prejudicial to substantial rights so as to jeopardize the fairness and integrity of the trial process."[54] Each of Tamba's claims regarding the admission of evidence fail separately; therefore, there is no cumulative error.[55]

[53] *Hoskins v. State*, 102 A.3d 724, 735 (Del. 2014).
[54] *Prince v. State*, 2019 WL 3383880, at *14 (Del. July 25, 2019).
[55] *Id.*

CONCLUSION

For the foregoing reasons the judgment of the Superior Court should be affirmed.

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DATE: November 13, 2023

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Appellee.	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Time New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 4,783 words, which were counted by Microsoft Word 2016.

/s/ Andrew J. Vella
Andrew J. Vella (ID No. 3549)
Chief of Appeals
Department of Justice

DATE: November 13, 2023