



IN THE SUPREME COURT OF THE STATE OF DELAWARE

GREGORY WING,)
)
 Defendant Below,)
 Appellant,) No. 320, 2023
)
 v.) ON APPEAL FROM THE
) SUPERIOR COURT OF THE
 STATE OF DELAWARE,) STATE OF DELAWARE
) ID No. 2105000987
 Plaintiff Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF DELAWARE

APPELLANT'S CORRECTED OPENING BRIEF

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NATURE OF PROCEEDINGS

On May 10, 2021, the grand jury returned a multiple defendant indictment, including Gregory Wing (hereinafter referred to as ‘defendant’) and Elijah Coffield (hereinafter referred to as ‘co-defendant’). The lead charge of illegal gang participation alleged twenty-four predicate offenses. On November 8, 2021, a re-indictment, was filed. (A18-A69) At the time of trial, the state and defense counsel had agreed and proceeded on an amended version of the re-indictment. The amended version charged twenty-eight counts, of which the defendant was charged in eighteen. (A71-A86)

Defendant was charged in count one (Gang Participation), count two (Possession of a Firearm During the Commission of a Felony), count three (Murder in the First Degree), count four (Possession of a Firearm During the Commission of a Felony), count five (Attempted Murder), count six (Possession of a Firearm During the Commission of a Felony), count seven (Conspiracy in the First Degree) count eight (Attempted Murder in the First Degree), count nine (Possession of a Firearm During the Commission of a Felony), count ten (Conspiracy in the First Degree), count eleven (Attempted Murder in the First Degree), count twelve (Possession of a Firearm During the Commission of a Felony), count thirteen (Attempted Murder in the First Degree), count fourteen (Possession of a Firearm During the Commission of a Felony), count fifteen (Conspiracy in the First

Degree), count sixteen (Murder in the First Degree), count seventeen (Possession of a Firearm During the Commission of a Felony) and count twenty-eight (Attempted Assault in a Detention Facility). (A71-A86)

On February 20, 2023, defendant proceeded to trial with co-defendant. On March 15, 2023, defendant was found guilty by a jury on all counts except count twenty-eight of which he was found not guilty.

On August 11, 2023, defendant was sentenced to life at supervision level 5 on two counts of first degree murder, twenty-five years at supervision level 5 one count of attempted murder, fifteen years at supervision level 5 on three counts of attempted murder, five years at supervision level 5 on five counts of possession of a firearm during the commission of a felony (PFDCF), five years at supervision level 5 on five counts of conspiracy, and three years at supervision level 5 for one count of gang participation. (A303-A309)

Defendant filed a timely Notice of Appeal. (A311-A312) This is Defendant's opening brief.

SUMMARY OF ARGUMENT

1. The Court abused its discretion by admitting witness Kenneth Griffin's October 30, 2020 statement into evidence under 11 Delaware Code sec. 3507 because the statement was not voluntarily given and the witness testified that most of the statement was not true.

2. The Court abused its discretion by sustaining the state's objection and precluding defendant from asking witness Tyrie Burton about his involvement in prior murders.

STATEMENT OF FACTS

Detective Kane of the Wilmington Police Department testified that on September 8, 2020, there was one fatal shooting and two non-fatal shootings that took place between the hours of 7:00 p.m. and 8:00 p.m. (A101-A109) (A112-A114)

At approximately 7:00 p.m., Ollier Henry was shot and killed on 500 block of Pine Street. Taquan ‘Tink’ Davis and Antionajsa Williams were walking with Ollier at the time of the shooting. (A138-A144) Ms. Williams was armed with a .22 caliber firearm at the time of the shooting. (A147-A148) (A158-159) She hid her gun after the shooting and it was not recovered. (A145) (A159-A163). Both men were members of the MGS gang. (A14) MGS is a violent gang that operates in Wilmington. Defendant was charged with first degree murder conspiracy to first degree murder, attempted murder, and two counts of possession of a firearm for this shooting. (A71-A86)

Nine minutes later, the Wilmington Police responded to a shooting near 502 South Heald Street in Wilmington. Police believe that Javar Curtis was the intended target. (A104-A106). Defendant was charged with attempted murder in the first degree, conspiracy in the first degree and possession of a firearm for that shooting. (A71-A86)

At approximately 8:00 p.m., Bryshawn LeCompte (‘Crafty Crew’) was shot

near 1001 West 7th Street in Wilmington. (A16) (A175) Javier Green was sitting next to LeCompte in the car when LeCompte was shot by Stanley Jones. (A303-A307) Defendant was charged with two counts of attempted murder, two counts of possession of a firearm, and conspiracy in the first degree for this shooting. (A71-A86) Both LeCompte and Green were associated with members of the MGS gang. (A112)

Ballistic reports determined that projectiles and/or casings found at the first and third reported shootings came back to a .22 caliber firearm in addition to the 9mm Baretta recovered from defendant at the time of his arrest. (A113-A117) Casings from the second shooting were fired from the same .22 caliber firearm. The .22 caliber gun was not recovered. (A117)

On September 12, 2020, Taquan 'Tink' Davis was shot and killed close to the intersection of Harrison and Elm Streets in the city of Wilmington. (A147-151) No casings were located at the scene. On March 13, 2021, three casings were located inside of a stolen Santa Fe. (A171- A173) A firearm examiner testified that those three casings were fired from the 9 mm Baretta firearm that defendant was arrested with. (A173)

The 9 mm Baretta used in these three shootings was stolen from Diamond Word while she was asleep in a Motel 6 in Newark Delaware on September 4, 2020. (A306-A307) Stanley Jones was at the hotel with Ms. Ward and admitted to using

the gun on September 8, 2020 to shoot Bryshawn LeCompte. (A303-A307)

On September 16, 2020, defendant was observed by members of the Delaware State Police and other law enforcement personnel driving a car that had been reported stolen on September 8, 2020, into the parking lot of a Wawa located 2621 Philadelphia Pike in Claymont, Delaware. (A118-A128) After a brief foot chase, defendant was arrested while lying on his stomach. A 9 mm Baretta handgun (serial number A087282X) became dislodged from the left side of his body while he was being placed in custody. (A123-124) The gun was reported stolen on September 5, 2020. This same gun was ballistically matched to 9 mm casings located at several shootings that occurred between September 8, 2020 and September 12, 2020 in the city of Wilmington. Three spent 9mm shell casings were found lying in front of the windshield, next to the windshield wipers of the stolen car. (A124-A125) (A168-170) Defendant was found to be in possession of a gold and white Apple iPhone. (A128) (A132) The phone was placed into defendant's personal property at the time of his incarceration at the Howard R. Young Correctional Institution. (A133)

Two search warrants were sought and granted regarding the phone that was recovered from defendant during that arrest. On October 2, 2020, a search warrant was granted to confiscate the phone from defendant's property at the jail to preserve evidence that was contained therein. On October 20, 2020, a second

warrant was sought and granted to search the contents of the phone seized from the date of the theft of the 9 mm Baretta up to the date of defendant's arrest with the firearm, specifically, September 4, 2020, through to September 16, 2020. (A133-A134)

In a separate case, defendant was charged with receiving stolen property for the car that he was driving in on September 20, 2020, and carrying a concealed weapon for the Beretta 9mm firearm that he was also in possession of that night. On March 3, 2021, defendant pled guilty to both counts. (A129-A131)

Tyrie Burton testified for the government. His testimony included several incriminating statements that were made to him by co-defendant. Additionally, on direct examination, he testified that he was serving a sentence for a guilty plea 'in association with [his] involvement with the MGS gang.' (A181) Burton had pled guilty to the charges of gang participation, conspiracy first, assault first and two counts of possession of a firearm during the commission of a felony. (A182) This plea included a cooperation agreement. (A182) The government then proceeded to ask the witness about other prior convictions, including a concealed weapon conviction from 2018 and a criminal impersonation from 2017. (A182-A183) Burton testified to beefs that he had with his gang's 'ops' which he testified was Northpak. (A183-A184) The government then questioned him about his knowledge regarding the identity of 'ops' within Northpak.(A184) He testified that

defendant and codefendant were Northpak members.

The government questioned and Burton answered questions about people affiliated with his gang who had allegedly been killed by Northpak members, including defendant and codefendant. (A185-A188) Specifically, Burton was asked about Ollier Henry and Taquan Davis, two of the murder victims allegedly shot by defendant. (A186-A187) He was also asked about a prior homicide victim, Steffon Price, who was an MSG member allegedly killed by a Northpak member. (A187-A188) Burton testified that he knew these murder victims because he was friends with them 'for a while' and 'for a long time.'

(A186-A187)

The government also used the witness to explain gang language to the jury based upon his lengthy and extensive time as a gang member. These terms included 'drill (to shoot at someone), 'spin the block' ('you drive through somebody hood, to see if they out there, to shootem'), 'score' ('you kill somebody'), and 'rain down on my ops' (rain down and shoot someone'). (A188) (A196)(A198-A199) (A202-A204)(A210) Burton then gave an explanation about how MGS would keep a 'score' when they killed someone affiliated with Northpak. (A188-A189) He also explained that if a Northpak member disrespected an MGS member, that Northpak member would then become a target of MGS. (A190) The government asked him about specific MGS members who disrespected

Northpak and then became murder victims. (A190-A191) Specifically, Burton testified to a murder that occurred prior to the acts alleged to have occurred in the indictment:

Q I'm showing you State's 39. We have heard this is an Instagram post from NSE.Beam, an account associated with Elijah Coffield. Who is pictured in this post?

A Brandon.

Q What do you, as an MGS member, take this post to mean?

A Disrespecting.

Q Why is that?

A Because he dislike Brandon. Somebody post this. (A191)

Most of the questions asked of Burton and answers given were not accompanied by any dates. The government asked Burton about events that occurred prior to the end of summer of 2020:

Q All right. In the summer of 2020, before I should say the end of that summer, who was on offense in the City of Wilmington?

A MGS. You said in the beginning of that year or end?

Q I said end of that year?

A Oh, NorthPak was.

Q NorthPak was? How do you know that NorthPak was on offense at the end of that year?

A Because they basically killed a lot of people.
(A204-A205)

The government elicited testimony from Burton regarding a prosecutor on Burton's 'case.' (A205-A206) There was no reference to what facts were involved in the case, whether it was a case that was open or closed or in what time frame the facts occurred. The only reference was that it was an 'MGS case.' (A205) He testified that he had been in jail since the summer of 2020 and that he no longer considered himself a member of the MGS gang because he was considered a snitch. (A207-A208) He testified that he and codefendant discussed 'drills' and 'stolly,' 'bowly,' and 'steam.' (A209-A210) He said that he was familiar with these terms because MGS and Northpak would use stolen cars for drills. Burton testified that codefendant bragged about his favorite stolen car described as a black Nissan with tinted windows. (A210)

On August 4, 2021, Burton met with Detective Kane, Detective Jones and Officer Masi. These law enforcement officers then gave extensive testimony during trial regarding their interpretation of gang language that seriously incriminated defendant and codefendant. Their understanding of these words pervaded their testimony regarding Instagram photos and videos, phone messages, photographs, in-person conversations, etc. Specifically Detective Kane (the lead officer) and Officer Masi (who testified almost exclusively about gang behavior and gang

language) used information given by Burton throughout the entirety of the trial.

Detective Jones was called to the stand in the middle of Burton's testimony under 11 Delaware Section sec. 3507. (A212-A213) The government played three video excerpts from Burton's statement to detectives from August 4, 2020. The most incriminating statements were as follows:

1. That co-defendant told Burton that he shot 'Crafty Kru' out of a car near Maryland Avenue. (Court exhibit 29)
2. That co-defendant told him that he saw 'Tink,' Ollier Henry walking with other people, drove around the block, jumped out of the car and was chasing people down driving in 'the bat mobile.' Burton said co-defendant said he also grazed one of the girls walking with Henry and Tink and that he shot Henry because 'they' were disrespecting 'Ray' on Instagram. (Court exhibit 30)
3. That co-defendant told him he was inside a black car, saw Tink and Ollier, got out of the car, shot the girl, got in the car and drove off. Co-defendant said that Stanley Jones was shooting at Tink. (Court exhibit 31)

On cross examination, defense council followed up on questions that were asked and answered, to some degree, by Burton on direct regarding the 2016 killing of Brandon Wingo. (A219-A220) Burton testified that he had been an MGS gang member for over a decade and that MGS and Northpak are keeping score of

‘the number of people or gang members each gang killed.’ (A220) In response, the defense asked Burton how many people he has killed who were members of Northpak. Burton refused to answer the question several times:

Q. Now, you said that MGS and NorthPak are kind of keeping score; right?

A Yes.

Q And they're keeping score of the number of people or gang members each gang killed; correct?

A Yes.

Q And now how many people in NorthPak have you killed?

A Did I kill?

Q Yes.

A I rather not answer no question like that.

Q Why is that?

A Because it don't pertain to what we talking about.

Q So you have killed some people in NorthPak?

A I'm not saying if I did or I didn't.

Q The score that you talk about that you keep, how many people has MGS killed in the NorthPak group?

A I don't know.

Q Well, you told us that -- the attorney that you keep score?

A Like I said, I'm not a member of MGS anymore, so I don't know what the score is.

Q Well, going back to before you went to jail, how many people in NorthPak did MGS kill?

A You said -- repeat

Q How many people in NorthPak did MGS kill?

A I don't know.

Q Can you give us an estimate?

A I don't know. I don't know a total amount.

Q So even though you were keeping score, you don't know?

A Yeah, I don't know.

Q Don't you think killing people would be something important to remember?

A Not if you didn't do it.

Q Well, is it important if your gang is involved in it?

A Not if you didn't do it.

Q How many people were in your gang with MGS?

A I don't know.

Q Can you give us an estimate?

A How many people that got indicted?

Q As many people that got indicted?

A Yes.

Q Are there other members of MGS that you are aware of that haven't been indicted?

A Not that I know of.

Q The ones that have been indicted are the ones that are killing people in NorthPak?

A No.

...

Q Has MGS also killed members of these other gangs?

A Some of them.

Q Some of them? Approximately how many?

A I don't know.

Q Have you killed any members of these other gangs?

MS. FLASCHNER: Your Honor, may I approach?
(A220-A224)

The prosecutor objected to the question and a sidebar took place:

MS. FLASCHNER: Your Honor, the State would object to this line of questioning. Mr. Heyden can get into the charges that Mr. Burton was charged with as it pertains to the MGS investigation and what was dropped and the deal he got but asking him about murders he has committed is getting into his Fifth Amendment Right and uncharged misconduct.

MR. HEYDEN: Your Honor, they have talked about keeping score and going back and forth. And I can ask the details of the score and the murders for these crimes and I can ask the details of the murders.

MS. FLASCHNER: And Mr. Heyden has gotten into the general back

and forth between MGS and NorthPak and Mr. Heyden has gotten into the general back and forth between MGS and NorthPak, their enemies and there have be – I believe he's gotten out already that there have been shootings on both sides of the gang war that the different sides are possible for. But asking this witness his criminal culpability in other murders that have been uncharged, that is kind of dangerous territory and is not admissible.

MR. WOODWARD: May I interject?

THE COURT: Yes.

MR. WOODWARD: In his statement he's asked or he says he was not involved in any murders. So that's why I believe this line of questioning is relevant because he lies in his statement to the police.

THE COURT: Hold on one second. Mr. Heyden, let me hear your explanation of why you are offering this or asking about this.

MR. HEYDEN: Well, it's to impeachment because it's different from he told the police in his statement.

THE COURT: First all, what is different than what he told the police?

MR. HEYDEN: Well, he said he didn't murder anybody or kill anybody. I mean this is different from what he said.

THE COURT: He didn't answer that question.

MR. HEYDEN: And it also shows his motive.

MS. FLASCHNER: Your Honor, what they're referring is if Tyrie Burton said in his statement he wasn't involved in any murders and they would like to talk about the circumstances of his MGS plea agreement and the charges that were dropped as a specific instance, I think they can get into given that he was charged with

—

THE COURT: I think the fact is he's going to answer if he killed anybody.

MR. HEYDEN: Well, he can do that.

THE COURT: And I think he's told you that.

MR. HEYDEN: I'm stuck with it.

THE COURT: Yes.
(A224-A227)

Burton admitted to lying several times to the police in his various prior statements. (A245-A246) On cross, he admitted to lying to protect people that he 'thought were [his friends].' (A247) One of the topics in which he lied to the police was regarding a prior murder in which he was a participant having pled guilty to conspiracy to commit murder. (A230-A231) (A244) He then testified that '[He] pled to what [he] – the crimes that [he] committed.' (A246) The state then was permitted to question Burton on re-direct to rehabilitate his credibility regarding his lying to the police about his conspiracy to murder charge. (A247)

The government called another cooperating witness named Kenneth Griffin. Griffin was facing charges in Delaware County when he reached out to Detective Kane. Detective Kane took a statement from Griffin on October 30, 2020. (A254-A255) Regarding the voluntariness of the statement, Griffin testified:

Q. Yeah. You asked to speak to Detective Kane because he's a Wilmington detective, not a Delaware County detective. Right?

A. I told Mr. Kane I didn't want to speak to him.

Q. You didn't want to speak to him?

A. Yeah.

Q. Okay. But you spoke to him?

A. But we spoke. Yeah. (A257)

On direct Mr. Griffin was elusive as to whether he had told the truth during his interview:

Q. Okay. When you spoke to him, did you tell the truth?

A. In regards to what?

Q. About what you spoke to him about.

A. I spoke on Butter.

Q. I just asked you did you tell him the truth --

A. I spoke on Butter. Yeah.

Q. Did you tell the truth?

A. Yeah. I spoke on Butter. Yeah.

MR. HILL: Your Honor, can we approach sidebar? (A257)

The government then had Mr. Griffin step down off the witness stand and called Detective Kane to attempt to lay a foundation for the 11 Delaware Code section 3507 testimony that the government wanted to introduce. (A258-A263)

Defense counsel cross examined the detective regarding the foundation and elicited the following testimony: 1) the information relayed by Griffin was not in

any way witnessed by Griffin, 2) Griffin was repeating things that he alleged had been told to him, and 3) that Griffin was ‘not able to vouch for any of the truthfulness .. of what he told [Detective Kane].’ (A264-A265) Detective Kane testified that Griffin told him that he was telling the truth but that Griffin had been arrested five days before reaching out to detectives and that he was incarcerated on one million dollars bail. (A265-A266)

The Court asked the defense attorneys:

THE COURT: Are there specific objections related to the statements themselves apart from the admissibility under 3507?

MR. HEYDEN: No.

MR. WOODWARD: No.

THE COURT: Okay. All right. (A269)

The Court overruled the foundational arguments made by the defense and admitted the interview under section 3507. (A268) After the Court made its ruling, Detective Kane changed his answer regarding bail and admitted, on redirect, that Mr. Griffin gave the statement because he wanted his bail lowered. (A270)

The Detective went on to play ten clips of the audio recorded statement. These portions included incriminating evidence regarding almost every charge defendant and codefendant were facing, including :

1. defendant and codefendant were two of the big players in the Northpak gang; (Court exhibit 45)

2. Northpak kills people ‘because that’s what they do;’ (Court exhibit 46)
3. Co-defendant got his guns from ‘Stu;’ (Court exhibit 47)
4. was trying to shoot Tink; (Court exhibit 50)
5. Defendant told him he shot Tink with the gun he was arrested with; (Court exhibit 51)
6. Shariff Hamilton was the person that he knew as ‘Butter;’ (Court exhibit 53)
7. Co-defendant told Griffin that he killed Shariff Hamilton at the Dash In; (Court exhibit 53)
8. ‘He’ told me he shot Kai Fiz. (Court exhibit 54)

After playing the clips, Detective Kane testified that Mr. Griffin repeatedly refused to speak with him after October 30th. (A278)

On cross, Griffin stated that ‘their whole premise though when [Detective Kane] came up here’ was because he wanted a benefit for his testimony. (A281)

Regarding his willingness to speak to the detectives, Griffin testified:

... They tried to come and speak to me multiple times like three times, four times they kept sending them back, sending them back. Then I came home, he tried to send me a subpoena from the mail. I ain't come. They gave me a hundred grand cash bail, put me in jail on a hundred grand cash bail, then they came and talked to me again. But a lot of that right there is botched though. (A282)

On cross examination, Griffin stated that ‘a lot of that shit [recorded statement] was just in the air like for real for real’ and that he was basically repeating ‘stuff’ that he had been hearing on the street. (A288) He admitted

that he lied about things that he told the detectives in his statement. (A289) (A289-A290) (A293) He also testified that the detectives did not record (or put in any report) all the discussions from the interview on October 30, 2020. Instead, Griffin said the following:

I never even knew that name until he told me that name. They recorded later. I never knew that name Ollier. I never knew that name ever. I never knew that name. So until he told me the name I said another name, then he corrected me on the name and then they record -- they let you talk, then they ask you do you remember what you talked about, then they press record. So if you got 80 people that come up and get on the stand and everybody statement is in sink and in chronicity with each other, they not pressing record from the door. They listen to you, take what they want to take out of it, write it down and then ask you questions in regard to what they writing down.

So now everybody's statement could sound like it blend together. When we talked before that, you press record. I never knew who Leiry was until he told me who that was. And because of the benefit that I was getting out why I said the name Leiry.

Q. Well, the benefit you hoped to get?

A. Yeah. Make sure I was going to get it. Ain't no hoping. I was going to get. I didn't want to talk no more. Because I didn't want to talk they was upset. I was up there for two years. They kept coming early in the morning, offering me donuts and all that. I don't want to talk to y'all. They leaving. They wait till I come home, put the subpoena out, I don't come to court, they kidnap me from my probation control, give me a hundred grand cash bail for failure to appear subpoena, give me a hundred grand cash bail and I wasn't even in the system. So now that I'm in jail around Christmas into new years when they come talk to me again, they ask me questions again about the situation. That's what happened. And then they let me leave. But if I didn't talk to them, I would still have been jail and I would have been

coming in here in whites.

Q. Mr. Wing never told you that he killed Tink, did he?

A. No. (A290-A291)

Griffin also testified:

Q. So you think they were feeding you information and then trying to get you to make these statements?

A. Yeah. ... Listen to what I'm saying to you, man: This is what I'm saying to you, man: The breakdown of the bits and pieces of the tape that they played, before that we had a conversation and then they pressed play on the tape recorder.

Q. And then the part of the conversation that occurred beforehand –

A. Part of the conversation is about getting your story accurate –

Q. Okay.

A. -- before we press play.

Q. And you were told in the beginning you didn't know anything about Olleir and Coffield had nothing to do with the Dash In and none of that was taped. Correct?

A. Correct. That wasn't taped.

A. Later. This was later. This is what I'm telling you. They said this to me later after the first conversation, then they corrected me with the name I kept saying.

...

Q. Okay. Now, is it fair to say that what you told them, you weren't telling them the truth, you are just trying to get out of jail? Is that correct?

A. For sure. Yeah. (A294-A296)

On August 11, 2023, defendant was sentenced to life at supervision level 5 on two counts of first degree murder, twenty-five years at supervision level 5 one count of attempted murder, fifteen years at supervision level 5 on three counts of attempted murder, five years at supervision level 5 on five counts of possession of a firearm during the commission of a felony (PFDCF), five years at supervision level 5 on five counts of conspiracy, and three years at supervision level 5 for one count of gang participation. (A303-A309) On September 6, 2023, defendant filed a timely Notice of Appeal. (A309- A315)

ARGUMENT

I. THE TRIAL COURT ERRED WHEN IT PERMITTED THE GOVERNMENT TO ELICIT AFFIRMATIVE EVIDENCE THROUGH THE INTRODUCTION OF A PRIOR STATEMENT UNDER 11 DELAWARE CODE SEC. 3507.

A. QUESTION PRESENTED.

Whether the Superior Court erred by admitting Kenneth Griffin’s prior, out-of- court, audio record statement under 11 *Del. C.* § 3507 without requiring the State to satisfy the foundational requirements. This issue was preserved by defense counsels’ objection to the foundation. (A264-A268)

B. SCOPE OF REVIEW.

The defendant's first claim is that the Superior Court erred by admitting Kenneth Griffin’s prior, out-of- court, audio record statement under 11 *Del. C.* § 3507 without requiring the State to satisfy the foundational requirements. This Court reviews a trial court's ruling admitting or excluding evidence for abuse of discretion. McCrary v. State, 290 A.3d 442, 454 (Del. 2023) citing, Milligan v. State, 116 A.3d 1232, 1235 (Del. 2015). An abuse of discretion occurs when a court has exceeded the bounds of reason in light of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice. Harris v. State, 301 A.3d 1175 (Del. 2023); Thompson v. State, 205 A.3d 827,834 (Del. 2019) (quoting McNair v. State, 990 A.2d 398, 401 (Del. 2010)).

C. MERITS OF THE ARGUMENT

Title 11 of the Delaware Code Section 3507 sets out the law for the use of prior statements as affirmative evidence. It states:

In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

This section shall not be construed to affect the rules concerning the admission of statements of defendants or of those who are codefendants in the same trial. This section shall also not apply to the statements of those whom to cross-examine would be to subject to possible self-incrimination.

The initial question of section 3507 voluntariness is a question of fact for the trial judge (and ultimately for the jury), and the judge must consider the effect that the totality of circumstances has on the will of the declarant. Taylor v. State, 23 A.3d 851, 860 (Del. 2011)(quoting Miller v. State, 630 A.2d 1103, 1993 WL 307619, at *2 (Del. 1993) (ORDER)). The question the trial judge must resolve is whether the conduct of the police overbore the will of the declarant when he made his statement. Id. at 860. This determination is for the trial judge to make on a case by case basis, Baynard v. State, 518 A.2d 682, 691 (Del. 1986), and the central

question a trial judge faces is "whether the behavior of the interrogators was such as to overbear the will of the interrogated to resist and bring about a statement 'not the product of a rational intellect and a free will' without regard to the truthfulness or reliability of the statements." State v. Rooks , 401 A.2d 943, 948-49 (Del. 1979) (citing Rogers v. Richmond, 365 U.S. 534 (1961)).

The majority opinion in Miranda v. Arizona limited itself to cases of custodial interrogation of "the defendant" by stating "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the **defendant** unless it demonstrates the use of procedural safeguards effective to secure the privilege against self- incrimination. Miranda v. Arizona, 384 U.S. 436, 444 (US 1966)(emphasis added).

The Supreme Court of Delaware gave rise to the first interpretation of Rule 3507 in Keys v. State, 337 A.2d 18, 23 (Del. 1975). This case set forth the following foundational rule that continues to apply to Section 3507 statements: "We do not mean to suggest any precise form of direct examination except that it should touch both on the events perceived and the out-of-court statement itself." Id at 23 The Court reasoned that since prior out-of-court statements were generally, not admissible at trial, subject to certain exceptions, and the new statute departed from that rule, "strict construction [was] applicable" and "[t]here should be a preference toward a narrow interpretation of the language in order to avoid overturning

established procedures by implication not necessary from the statutory language." Id. at 22 (quoting DeJoseph v. Faraone, 254 A.2d 257 (Del.Super. 1969); Wilmington Housing Authority v. Greater St. John Baptist Church, 291 A.2d 282 (Del. 1972).

The Keys Court construed the statute's use of the word "witness" as indicating one who testifies at trial. It construed the phrase "subject to cross-examination" as requiring that there be a direct examination of the witness, noting that "[i]n this country cross-examination has been tied to the content or at least the occurrence of direct examination." Keys, at 22. It noted that subsection (b) of the statute, which refers to "the witness'[s] in-court testimony," "clearly implie[d] a requirement of in-court testimony by the witness." Keys. at 23.

The Court concluded from these parts of the statute that "in order to use the out-of-court statements of [the victim], in the situation presented by this case, the legislative language required the production and direct examination of the witness [victim] by the prosecution." Keys at 23. The Court then set forth the following foundational rule that continues to apply to Section 3507 statements: "We do not mean to suggest any precise form of direct examination except that it should touch both on the events perceived and the out-of-court statement itself." McCrary v. State, 290 A.3d 442 (Del. 2023)

One month after the Keys decision, in Johnson v. State, the Court addressed

the issue of the ‘turncoat witness’ who cannot recall events on the witness stand after having previously described them out-of-court. The Court concluded that there is nothing in the Statute or its intent which prohibits the admission of the statements based on limited courtroom recall. Johnson v. State, 338 A.2d 124 (Del.1975) In other words, if a witness cannot testify due to a lack of recall, that testimony satisfies Keys’ requirements that a witness’ testimony touch on the events perceived and the prior statement. McCrary at 457.

On January 13, 2023, the Court decided McCrary v. State and discussed the application and requirements of Section 3507:

We believe that Section 3507 permits the introduction of a prior statement by a turncoat witness because, once the prosecutor has asked the questions and the witness has claimed not to recall, the factfinder can evaluate the truthfulness of the testimony of the turncoat witness, and the defendant can cross examine on those same topics without having to call the witness and seeming to sponsor their testimony. Those principles apply not only to a turncoat witness but to witnesses generally. McCrary v. State, 290 A.3d 442, 449.

In 1991, the Supreme Court faced a different factual scenario involving the ‘touching-on’ requirements in Ray v. State, 587 A.2d 439 (Del.1991). This case involved a child victim who declined to respond to the prosecutor’s request that she tell the jury what the defendant did to her. The victim testified that she told her aunt and a detective what happened to her, but she declined to testify about what she told them. The Court allowed the government to admit the prior out of court

statement made to the aunt and detective. On appeal, the Supreme Court found that the lower court committed error by admitting the statement under 3507 because the victim's in court testimony did not 'touch on the event perceived:

The use of hearsay statements under section 3507 must be carefully circumscribed in order to avoid, as occurred here, the only direct evidence concerning the commission of the offense against a child being presented through the testimony of third parties relating what the victim stated on a prior occasion. The statute becomes meaningless if there is no opportunity to test the truth of the statements offered. Id at 444.

The Court recognized a further foundational requirement: the witness must offer testimony about the truth or falsity of the out-of-court statement. The witness need not affirm the truthfulness of the statement but must say "whether or not [it is] true." Id. at 443. A refusal to testify is more akin to the invocation of privilege or a court-imposed limitation on examination, which have been held to interfere with the constitutional right to confront witnesses and should operate similarly under Section 3507. McCrary v. State, 290 A.3d 442, 449. The Court explained in Blake v. State, that the Keys two-part foundation is grounded in the defendant's confrontation rights under the Sixth Amendment. Blake v. State, 3 A.3d 1077 (Del. 2010). The foundational requirement that the witness indicate whether or not the prior statement is true is one reason why the substantive operation of section 3507 does not violate the Sixth Amendment. Blake at 1082. The Court found:

In Ray, we held that the declarant must testify about whether or not the prior statement is truthful because, as Johnson recognized, cross-

examination plays an essential role in an accused's Sixth Amendment right to confront the witness against him. Johnson at 127.

Therefore, in Johnson we held that the jury or trier of fact must assess the declarant's credibility on the witness stand "in the light of all the circumstances presented, including any claim by the witness denying the prior statement, or denying memory of the prior statement or operating events, or changing his [or her] report of the facts." Johnson at 128. In Johnson, we adopted--and have since followed--a case- by- case approach in determining whether a prior statement has been admitted into evidence under section 3507 in violation of an accused's Sixth Amendment right to confrontation.

The Blake Court recognized the importance of the fact-finder's ability to assess the declarant's credibility on the witness stand "in light of all the circumstances presented" Blake at 1082, quoting, Johnson v. State at 128. The Court then summarized:

The Sixth Amendment requires an entirely proper foundation, if the prior statement of a witness is to be admitted under section 3507 as independent substantive evidence against an accused. This Court has consistently and unequivocally held "a witness' statement may be introduced **only** if the two-part foundation is first established: the witness testifies about **both** the events and *whether or not they are true*." Accordingly, in Ray we held that "in order to conform to the Sixth Amendment's guarantee of an accused's right to confront witnesses against him, the [witness] must also be subject to cross-examination on the content of the statement *as well as its truthfulness*."

Id. at 1083 (quoting Ray, 587 A.2d at 443).

First, the statement given by Mr. Griffin on October 30, 2020 was not voluntary because the statement was only given because of a promise law enforcement made to the witness even though they had no intention to honor the

promise. Second, the case at bar is not a situation where the witness testified that he could not remember his prior out of court statement or refused to answer any questions. Griffin testified several times that his out of court statement was not true. Griffin even testified to several reasons as to why the statement was completely unreliable and what portions of the statement were false.

The State attempted to lay a foundation through Detective Kane to admit the witness statement pursuant to 11 Del. C. sec. 3507. Detective Kane testified that he read Griffin his Miranda rights. (A261) Detective Kane testified that Griffin had not witnesses anything that he talked about but, instead, related things he had learned about these crimes. (A265) Both defense attorneys asked Detective Kane whether Griffin gave the statement in exchange for the lowering of his bail. Each time, Detective Kane answered that he did not know or could not recall:

CROSS-EXAMINATION BY MR. HEYDEN:

...

Q. And then he was asking you when he made that statement, he wanted to get his bail lowered. Is that correct?

A. I don't recall. I don't recall if he said that or not.

Q. All right. Thank you. Page 132

CROSS-EXAMINATION BY MR. WOODWARD:

...

Q. And at the time he was in custody and facing a very, very hefty amount of bail. Correct?

A. I don't recall what his bail was, sir.

Q. Million dollars?

A. I would say that's a large amount.

Q. And he told you he wanted to talk to you so he could get his bail lowered. Correct?

A. I don't recall if he said that or not. (A266)

After these questions were answered, the Court determined that the statement was voluntarily given and allowed the government to admit the statement through Detective Kane. (A268)

The first question asked by the government of Detective Kane after the Court allowed admission of the statement under section 3507 directly contradicted the testimony given by Detective Kane during the foundational questions:

Q. Before we start with the statement, Detective Kane, Mr. Griffin spoke to you because he wanted something. Is that fair?

A. Yes.

Q. What was that?

A. Bail lowered.

Q. Did you have any power to do that?

A. No. Not at all. (A270)

The Court erred when it allowed Griffin's statement to be introduced under 3507 because the statement was not voluntarily given. Griffin testified that he did

not want to speak to Detective Kane on October 30, 202. (A257) In fact, Griffin turned detectives away at least three times even though they brought him donuts. (A291) On October 30, 2020, Griffin was brought into a room while he was in custody and placed in hand cuffs (A267) Detective Kane denied it twice, however, eventually testified that Mr. Griffin only spoke to him because he wanted his bail lowered. (A270) The Court used the fact that Griffin was read his Miranda rights as a factor in Griffin's voluntariness.

First, Defendant avers that the totality of the circumstances proves the statement was not voluntarily given. Miranda rights protect a defendant's rights against self-incrimination. Miranda rights should not be considered a factor in determining the voluntariness of a witness' statement, especially where the witness is not a suspect in any of the activity. Second, the trickery used by Detective Kane in leading Griffin to believe his meeting with him would help Griffin in lowering his substantial bail eradicates the voluntariness of the statement.

Detective Kane testified that Mr. Griffin spoke to him so that Kane would lower his bail. Detective Kane knew he was misleading Mr. Griffin because Kane testified that he did not have the power to do that. Detective Kane testified that Mr. Griffin agreed to give a statement for something that the detective had no intention of doing.

Second, the Court erred when it allowed Mr. Griffin's statement to be

introduced under 3507 because the statements were not truthful. On direct examination, Griffin did not testify that his statement to Detective Kane was truthful. Instead, the opposite is true:

Q. Okay. When you spoke to [Detective Kane], did you tell the truth?

A. In regards to what?

Q. About what you spoke to him about.

A. I spoke on Butter.

Q. I just asked you did you tell him the truth—

A. I spoke on Butter. Yeah.

Q. Did you tell the truth?

A. Yeah. I spoke on Butter. Yeah.

MR. HILL: Your Honor, can we approach sidebar?

His statement ‘yeah, I spoke on Butter’ in no way was an acknowledgment that Griffin told the truth. Mr. Griffin told the detectives on tape and in his court testimony that “Butter” is the street name for Shariff Hamilton, who was shot at the Dash In, a charge levelled against co-defendant. There was no follow up by the prosecutor as to what part of his statement regarding ‘Butter’ was the truth. Defendant avers that his acknowledgement that he told the truth specifically about ‘Butter’ means everything else that Griffin told police was a lie. After this exchange, the prosecutor requested and was granted permission to proceed under

section 3507.

After ten clips of the statement were played for the jury, Mr. Griffin was recalled to the stand. He then proceeded to describe the scenario under which the recording was made, all which defendant avers showed that the recoding contained inaccuracies, lies and law enforcement suggested facts. Mr. Griffin stated that he gave statements that were different from those heard on the recording. He testified that law enforcement gave him names that he did not know but incorporated them in his statements once the recording started. He testified that he outright lied about crucial facts including the murders for which defendant and codefendant were being tried. He testified that he was not telling detectives the truth but was just trying to get out of jail.

Defendant avers that the Court erred by admitting Kenneth Griffin's prior, out-of-court, audio record statements under 11 Del. C. § 3507 because the evidence showed that Griffin's recorded statement was not given voluntarily and was not truthful and, therefore, failed to establish the foundation mandated under section 3507.

II. THE TRIAL COURT ERRED WHEN IT PRECLUDED THE DEFENSE FROM FULLY CROSS EXAMINING TYRIE BURTON ON HIS PRIOR CRIMINAL ACTIVITY.

A. QUESTION PRESENTED.

Whether the Court erred by precluding defense counsel from fully cross examining the state's witness, Tyrie Burton regarding his prior criminal acts? This issue was preserved by the court's sustaining of the state's objection to defense counsels' line of questioning on cross examination. (A220-A227)

B. SCOPE OF REVIEW.

The defendant's second claim is that the Court abused its discretion by sustaining the State's objection to cross examination of Tyrie Burton regarding his prior criminal behavior. A decision whether to admit testimony will not be reversed absent a clear showing of an abuse of discretion. Thompson v. State, 399 A.2d 194, 198-99 (Del. 1979); Milton v. State, 2013 Del. LEXIS 292 *14. "Judicial discretion 'is the exercise of judgment directed by conscience and reason, and when a court has not exceeded the bounds of reason in view of the circumstances and has not so ignored recognized rules of law or practice so as to produce injustice, its legal discretion has not been abused.'" Spencer v. Wal-Mart Stores East, LP., 930 A.2d 881, 886-87 (Del. 2007)(quoting Firestone Tire & Rubber Co. v. Adams, 541 A.2d 567, 570 (Del. 1988)); Milton v. State, 2013 Del. LEXIS 292, *14.

C. MERITS OF THE ARGUMENT

The Sixth Amendment to the United States Constitution provides for the right to confrontation: “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]” The United States Supreme Court has referred to this right as a “bedrock procedural guarantee” and has long held that “a primary interest secured by [the Confrontation Clause of the Sixth Amendment] is the right of cross-examination.” Douglas v. Alabama, 380 U.S. 415 (1965). See also Weber v. State, 457 A.2d 674, 682 (Del. 1983) (“A certain threshold level of cross examination is constitutionally required, and the discretion of the trial judge may not be interposed to defeat it.”); Snowden v. State, 672 A.2d 1017, 1024 (Del. 1996). “Cross-examination is the ‘principal means by which the believability of a witness and the truth of his testimony are tested.’” Snowden v. State, 672 A.2d at 1024 (quoting Davis v. Alaska, 415 U.S. 308, 316 (1974)). “[The Confrontation Clause] commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing the crucible of cross-examination.” Crawford v. Washington, 541 U.S. 36, 61 (2004).

Delaware Rule of Evidence 607 states that “[t]he credibility of a witness may be attacked by any party.” Delaware Rule of Evidence 616 further explains that “[f]or the purpose of attacking the credibility of a witness, evidence of bias, prejudice or interest of the witness for or against any party to the case is

admissible.” Milton v. State, 2013 Del. LEXIS 292, *13. It is within the discretion of the trial judge to admit or deny this specific type of evidence. However, a trial judge “may not . . . exercise this discretion so as to defeat a party’s right to effective cross-examination.” Milton v. State, Del. LEXIS 292, *14, (quoting Garden v. Sutton, 683 A.3d 1041, 1043 (Del. 1996)).

The Supreme Court has identified several factors to guide the trial court in the exercise of its discretion:

[T]he trial judge should consider (1) whether the testimony of the witness being impeached is crucial; (2) the logical relevance of the specific impeachment evidence to the question of bias; (3) the danger of unfair prejudice, confusion of issues, and undue delay; and (4) whether the evidence of bias is cumulative. Snowden v. State, 672 A.2d at 1025.

First, the testimony elicited from Burton was crucial to the state’s case. Tyrie Burton had testified on direct to his extensive knowledge of terms used by gangs pertaining to shootings, murders, stolen cars and other criminal activity. These terms were used repeatedly by the lead investigator as well as the state’s investigator who testified extensively at trial to those terms’ meanings. The detectives used the information that Burton gave them to explain defendant’s motivation and intent behind the crimes with which he was charged. Defendant avers that both the detective and the investigator established their basis of knowledge, at least in part, through their interview of Burton in August of 2020.

Burton also testified regarding the term ‘score.’ Through his testimony, the state alleged that Burton’s gang, MGS, and defendant’s gang, Northpak, would keep track, or ‘score,’ of how many murders each group had against the other. The state used this term and theory continuously throughout the trial.

Second, Burton was clearly biased against defendant. Investigator Masi testified that Burton was a ‘high ranking’ member of the MGS gang. He testified that lifelong friends had been killed by the Northpak gang. Moreover, he was testifying under a cooperation agreement (A182) and testified that he was ‘looking for them to give [him] a deal, right, to kind of cut [his] time in prison. (A232) One of the cases that he agreed to cooperate for potential favorable treatment from the government involved his participation in a murder. (A249)

Moreover, Burton testified about people who had been killed that he knew for large parts of his life. He had a relationship with every murder victim that was given to him by the state. He testified to murders that were committed by gang members involving both his gang and the gang to which he testified defendant belonged. He had an obvious bias against members of a rival gang that he alleged killed his childhood friends.

Third, there was no danger of unfair prejudice, confusion of issues, or any undue delay in allowing full cross examination of Burton. The state’s questioning of Burton on direct centered on drawing out evidence involving murders and

Burton's knowledge of such. The state asked about specific murders, including one in which Burton pled to conspiracy to commit murder. Cross examination on his knowledge and involvement in his own murders would have shown his bias, not confused the jury.

Despite the crucial evidence that the State elicited, the defense was precluded from full and extensive cross-examination of Mr. Burton and his prior criminal activity. He testified for the State regarding many terms associated with murder, shootings, and killings, yet the defense was precluded from following up in the area of his personal experience with and knowledge of these phrases. His conviction involving a murder and the possibility that he was involved in other murders, killings and potentially deadly shootings was relevant to this testimony involving his knowledge and testimony regarding crimes involving his and other gangs.

As a result, defense counsel was precluded from attacking Burton's credibility regarding his testimony of gangs 'keeping score.' The defense could not question the witness about how many murders he had contributed to the 'score' or his personal knowledge of the term.

Defendant avers that, by precluding the defense from questioning the witness about whether he had killed anyone, they were not able to fully and effectively cross examine him about the facts of his open case for conspiracy to

commit murder. (A244) The jury would have been able to determine how biased he was in his testimony against defendant and codefendant by determining, based upon the facts of his case, how important it was for him to please the state so that they would speak on his behalf in that case.

The facts of Burton's prior conspiracy to commit murder were also relevant because he lied about it to the police. (A244) His credibility was a crucial element in the trial and evidence of his deception to the police should have been a permitted. The defense attorneys should have been allowed to cross examine Burton on the lies that he told regarding the prior killing with which he was involved.

The prosecutor, however, was permitted to rehabilitate the witness regarding his statement to the police about Burton's case involving a murder with which he was charged. (A247)

Burton was a crucial witness for the state's case. Not only did he furnish and explain gang terms to the detectives, but also allowed the three detectives to extensively use and define those terms to the jury. He also was crucial to providing testimony regarding several of the murders that defendant and codefendant were charged with. Moreover, his recorded statement that was played by the state included incriminating statements that Burton said came directly from co-defendant. This was highly prejudicial to defendant because the crimes that Burton

claimed were admitted to by the co-defendant involved predicate acts under defendant's gang participation charge. This significant prejudice to defendant denied defendant a fair trial.

Defendant avers that the Court defeated his right to effective cross-examination when he sustained the state's objection to the line of questioning regarding Burton's involvement in murders.

CONCLUSION

Mr. Wing respectfully requests this Honorable Court to remand the case for a new trial subject to the exclusion of evidence related to the statements of Mr. Griffin played into evidence by Detective Kane under section 3507 and subject to Mr. Burton to full and fair cross examination pursuant to the Sixth Amendment.

Respectfully Submitted,

Maureen Coggins, Esquire
509 Swede Street
Norristown PA 19404
610-721-2725

and

Dated: December 11, 2023

/s/ Jan A. T. van Amerongen, Jr.
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IN THE SUPREME COURT OF THE STATE OF DELAWARE

ERIC C. LLOYD,)
)
 Defendant Below,)
 Appellant,)
) No. 460, 2019
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. Appellant’s Corrected Opening Brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word Office 365.

2. Appellant’s Corrected Opening Brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 9069 words, which were counted by Microsoft Word Office 365.

Dated: December 11, 2023

/s/ Jan A. T. van Amerongen, Jr.
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(302) 468-5074
Attorney for Appellant

EXHIBIT A
TRIAL COURT'S JUDGEMENT AND RATIONALE FOR ARGUMENT I

THE COURT: The evidence is that he reached out to Special Agent Hnat and that she reached out to Detective Kane. Sounds through the questions you elicited that he was -- may have been trying to have his bail reduced, which makes a lot of sense, which would also be, you know, tending to sell a voluntary statement, but the evidence is that he was given his Miranda warnings and waived them and consented to make a statement, so that means it was a voluntary statement in my view. So for that reason, and we've touched on the issue of truthfulness here and on the topics of the conversation, so I think the 3507 requirements have been met.

EXHIBIT B

TRIAL COURT'S JUDGEMENT AND RATIONALE FOR ARGUMENT II

MS. FLASCHNER: Your Honor, the State would object to this line of questioning. Mr. Heyden can get into the charges that Mr. Burton was charged with as it pertains to the MGS investigation and what was dropped and the deal he got but asking him about murders he has committed is getting into his Fifth Amendment Right and uncharged misconduct.

MR. HEYDEN: Your Honor, they have talked about keeping score and going back and forth. And I can ask the details of the score and the murders for these crimes and I can ask the details of the murders.

MS. FLASCHNER: And Mr. Heyden has gotten into the general back and forth between MGS and NorthPak and Mr. Heyden has gotten into the general back and forth between MGS and NorthPak, their enemies and there have been – I believe he's gotten out already that there have been shootings on both sides of the gang war that the different sides are possible for. But asking this witness his criminal culpability in other murders that have been uncharged, that is kind of dangerous territory and is not admissible.

MR. WOODWARD: May I interject?

THE COURT: Yes.

MR. WOODWARD: In his statement he's asked or he says he was not involved in any murders. So that's why I believe this line of questioning is relevant because he lies in his statement to the police.

THE COURT: Hold on one second. Mr. Heyden, let me hear your explanation of why you are offering this or asking about this.

MR. HEYDEN: Well, it's to impeachment because it's different from he

told the police in his statement.

THE COURT: First all, what is different than what he told the police?

MR. HEYDEN: Well, he said he didn't murder anybody or kill anybody. I mean this is different from what he said.

THE COURT: He didn't answer that question. MR. HEYDEN: And it also shows his motive.

MS. FLASCHNER: Your Honor, what they're referring is if Tyrie Burton said in his statement he wasn't involved in any murders and they would like to talk about the circumstances of his MGS plea agreement and the charges that were dropped as a specific instance, I think they can get into given that he was charged with –

THE COURT: I think the fact is he's going to answer if he killed anybody.

MR. HEYDEN: Well, he can do that.

THE COURT: And I think he's told you that.

MR. HEYDEN: I'm stuck with it.

THE COURT: Yes.

EXHIBIT C

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

VS.

GREGORY WING

Alias: No Aliases

DOB: 12/02/2001

SBI: 00786469

CASE NUMBER:

N2105000987

IN AND FOR NEW CASTLE COUNTY
CRIMINAL ACTION NUMBER:

IN21-11-0861

MURDER 1ST(F)

IN21-11-0873

MURDER 1ST(F)

IN21-11-0863

ATT MURDER 1ST(F)

IN21-11-0866

ATT MURDER 1ST(F)

IN21-11-0875

ATT MURDER 1ST(F)

IN21-11-0870

ATT MURDER 1ST(F)

IN21-11-0860

PFDCF(F)

IN21-11-0862

PFDCF(F)

IN21-11-0864

PFDCF(F)

IN21-11-0867

PFDCF(F)

IN21-11-0874

PFDCF(F)

IN21-11-0865

CONSPIRACY 1ST(F)

IN21-11-0868

CONSPIRACY 1ST(F)

IN21-11-0872

CONSPIRACY 1ST(F)

IN21-11-0859

GANG(F)

COMMITMENT

ALL SENTENCES OF CONFINEMENT SHALL RUN CONSECUTIVE

CONSOLIDATED CASE # 2011011629

CONSOLIDATED CASE # 2009007868

SENTENCE ORDER

NOW THIS 11TH DAY OF AUGUST, 2023, IT IS THE ORDER OF THE
COURT THAT:

APPROVED ORDER

1

September 6, 2023 10:45

STATE OF DELAWARE
VS.
GREGORY WING
DOB: 12/02/2001
SBI: 00786469

The defendant is adjudged guilty of the offense(s) charged.
Costs are hereby suspended. Defendant is to pay all
statutory surcharges.

AS TO IN21-11-0861- : TIS
MURDER 1ST

The defendant shall pay his/her restitution joint/severally
as follows: \$5000.00 TO VICTIMS COMP ASSISTANCE PROG

Effective September 11, 2022 the defendant is sentenced
as follows:

- The defendant is placed in the custody of the Department
of Correction for the balance of his/her natural life at
supervision level 5

AS TO IN21-11-0873- : TIS
MURDER 1ST

The defendant shall pay his/her restitution as follows:
\$5000.00 TO VICTIMS COMP ASSISTANCE PROG

- The defendant is placed in the custody of the Department
of Correction for the balance of his/her natural life at
supervision level 5

AS TO IN21-11-0863- : TIS
ATT MURDER 1ST

- The defendant is placed in the custody of the Department
of Correction for 25 year(s) at supervision level 5

- Suspended after 15 year(s) at supervision level 5

- For 10 year(s) supervision level 4 DOC DISCRETION

- Suspended after 6 month(s) at supervision level 4 DOC
DISCRETION

- For 2 year(s) supervision level 3

- Hold at supervision level 5

- Until space is available at supervision level 4 DOC
DISCRETION

- The Court has concluded that Defendant is in need of
correctional treatment.

STATE OF DELAWARE
VS.
GREGORY WING
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- Defendant to be assessed at Level 5 by DOC using an objective verified tool for risk/needs/responsivity for placement in programming at Level 5 to address offender's criminogenic risk and treatment needs.

- If the defendant is deemed appropriate for treatment defendant shall fully participate in and successfully complete any treatment or programming recommended or required.

AS TO IN21-11-0866- : TIS
ATT MURDER 1ST

- The defendant is placed in the custody of the Department of Correction for 15 year(s) at supervision level 5

AS TO IN21-11-0875- : TIS
ATT MURDER 1ST

- The defendant is placed in the custody of the Department of Correction for 15 year(s) at supervision level 5

AS TO IN21-11-0870- : TIS
ATT MURDER 1ST

- The defendant is placed in the custody of the Department of Correction for 15 year(s) at supervision level 5

AS TO IN21-11-0860- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

AS TO IN21-11-0862- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

AS TO IN21-11-0864- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

AS TO IN21-11-0867- : TIS
PFDCF

- The defendant is placed in the custody of the Department

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of Correction for 5 year(s) at supervision level 5

AS TO IN21-11-0874- : TIS
PFDCF

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

AS TO IN21-11-0865- : TIS
CONSPIRACY 1ST

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN21-11-0863 .

AS TO IN21-11-0868- : TIS
CONSPIRACY 1ST

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN21-11-0865 .

AS TO IN21-11-0872- : TIS
CONSPIRACY 1ST

- The defendant is placed in the custody of the Department of Correction for 5 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number IN21-11-0868 .

AS TO IN21-11-0859- : TIS
GANG

- The defendant is placed in the custody of the Department of Correction for 3 year(s) at supervision level 5

- Suspended for 1 year(s) at supervision level 3

Probation is concurrent to criminal action number

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IN21-11-0872 .

SPECIAL CONDITIONS BY ORDER

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The defendant shall pay any monetary assessments ordered during the period of probation pursuant to a schedule of payments which the probation officer will establish.

Defendant shall receive mental health evaluation and comply with all recommendations for counseling and treatment deemed appropriate.

See Notes

For the purposes of ensuring the payment of costs, fines, restitution and the enforcement of any orders imposed, the Court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full. This includes the entry of a civil judgment pursuant to 11 Del.C. 4101 without further hearing.

NOTES

NO CONTACT WITH VICTIMS OR VICTIMS FAMILY: Ollier Henry Family, Taquan Davis Family, Javar Curtis, Bryshawn LeCompte Family, Jiveer Green, Shareef Hamilton Family, Leland Stanley, or Sakai Clark.

Probation Consolidation:

ID#s 2011011629 & 2009007868

N21-01-0169I Assault 1st Degree

N21-04-0470I Conspiracy 2nd Degree

IN20-11-1040 RSP >\$1500

IN20-11-1038 CCDW

The above period of probation is hereby consolidated to run concurrent with the probationary period under case number 2105000987. All previous conditions shall remain the same.

JUDGE FERRIS W WHARTON

FINANCIAL SUMMARY

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SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	
RESTITUTION ORDERED	10000.00
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	
PROSECUTION FEE ORDERED	
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	15.00
DELJIS FEE ORDERED	15.00
SECURITY FEE ORDERED	150.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	225.00
SENIOR TRUST FUND FEE	
AMBULANCE FUND FEE	

TOTAL 10,405.00

APPROVED ORDER 7 September 6, 2023 10:45