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Case Number 111,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH GIBSON,

Defendant Below,
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below,
Appellee.

No. 111, 2024

On appeal from the Superior Court of the State of Delaware

STATE'S ANSWERING BRIEF

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NATURE OF PROCEEDINGS

On July 6, 2021, a Superior Court grand jury indicted Keith Gibson on forty-one charges, including first-degree murder, attempted first-degree murder, first-degree robbery, second-degree assault, first-degree reckless endangering, theft of a motor vehicle, second-degree conspiracy, drug dealing, wearing body armor during the commission of a felony ("WBADCF"), possession of a firearm during the commission of a felony ("PFDCF"), possession of a firearm by a person prohibited ("PFBPP"), possession of ammunition for a firearm by a person prohibited ("PABPP"), and possession of a deadly weapon (a knife) by a person prohibited ("PDWBPP").[1]

On May 9, 2022, Gibson moved to sever his charges for separate trials.[2] The Superior Court granted severance but on different terms than Gibson requested.[3] The court divided the counts into three groupings: (i) the Basilio, Wright, Almansoori, and Collins cases (collectively, the "Group 1 Cases"); (ii) the Harris case; and (iii) the

[1] A1, at Docket Item ("D.I.") 1; A134–51.
[2] A6, at D.I. 37.
[3] *State v. Gibson*, 2022 WL 16642860, at *1–4 (Del. Super. Ct. Nov. 2, 2022).

drug-dealing case.[4] The court further severed the person-prohibited charges within each grouping.[5]

Gibson also moved to suppress evidence seized from his iPhone.[6] The Superior Court denied the motion.[7]

In June 2023, the State filed a motion to admit evidence of Gibson's prior bad acts, including evidence of a robbery and murder at a Dunkin' Donuts in Philadelphia, under D.R.E. 404(b).[8] The Superior Court granted the motion in part and denied it in part.[9]

The "*A*" portion of the Group 1 Cases (all counts except the person-prohibited charges) proceeded to trial on October 31, 2023.[10] During the State's case-in-chief, Gibson objected to the admission of sales receipts as hearsay.[11] Gibson also objected to a witness's testimony as to the meaning of a slang term, arguing that it was

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[4] *Id.* at *3–4.
[5] *Id.* at *4.
[6] A6, at D.I. 33.
[7] *State v. Gibson*, 2023 WL 7004105, at *1–5 (Del. Super. Ct. Oct. 23, 2023), 2022 WL 16642860, at *5–6.
[8] *See Gibson*, 2023 WL 7004105, at *1 & n.3.
[9] *Id.* at *8–13.
[10] A20, at D.I. 126.
[11] A256–57.

hearsay and lacked a proper foundation.[12] The court overruled both objections.[13]

Mid-trial, the State dismissed the charge of second-degree assault and the related count of PFDCF.[14] The jury found Gibson guilty of the remaining 21 counts: (i) four counts of first-degree murder; (ii) one count of attempted first-degree murder; (iii) four counts of first-degree robbery; (iv) nine counts of PFDCF; (v) one count of WBADCF; (vi) one count of theft of a motor vehicle; and (vii) one count of second-degree conspiracy.[15] Following the verdict, a second trial was held on the "*B*" portion of the Group 1 Cases, the person-prohibited charges.[16] The jury convicted Gibson of all four counts of PFBPP.[17]

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[12] A274.
[13] A269–71; A274–76.
[14] A20, at D.I. 126.
[15] A20, at D.I. 126.
[16] A32, at D.I. 45.
[17] A32, at D.I. 45.

The Superior Court merged the PFBPP convictions for purposes of sentencing.[18] Then, on March 8, 2024, the court sentenced Gibson, in the aggregate, to seven life sentences plus 297 years in prison.[19]

Gibson filed a timely notice of appeal. He filed an opening brief on November 22, 2024. This is the State's answering brief.

[18] *State v. Gibson*, 2024 WL 939724, at *1–3 (Del. Super. Ct. Mar. 4, 2024).
[19] Opening Br. Ex. A, at 2–5.

SUMMARY OF ARGUMENT

I. DENIED. The Superior Court did not abuse its discretion by denying severance of the Wright case from the Basilio and Almansoori cases. Gibson does not substantiate any allegation of prejudice that would have justified severance. Evidence from the cases were admissible in the others.

II. DENIED. The Superior Court did not abuse its discretion by denying Gibson's motion to suppress evidence seized from his cell phone. The warrant particularly stated the place to be search and categories of information to be seized. It established a logical nexus between the phone and the alleged offenses. Plus, even if admitted in error, it was harmless beyond a reasonable doubt.

III. DENIED. The Superior Court did not abuse its discretion by admitting, under D.R.E. 404(b), the segment of the Dunkin' Donuts video that showed Gibson grabbing and pushing the employee into the store at the outset of the robbery. The longer video was already admissible under D.R.E. 404(b). Any additional prejudice from this particular segment, in the context of a serial-murder trial, was *de minimis* and did not shift the balance of considerations.

IV. DENIED. The Superior Court did not abuse its discretion by admitting receipts from the bicycle shop under the exceptions to the rule against hearsay set forth in D.R.E. 803(15) and 807. Gibson does not challenge the receipts' admissibility under D.R.E. 807, which resolves the claim. In any case, the receipts were also admissible under D.R.E. 803(15), and even if they were not, their admission was harmless.

V. DENIED. The Superior Court correctly determined that Amanda Masteller's testimony explaining that the phrase "doing a lick" meant "committing a robbery" was not hearsay. The term is not obscure or uniquely coded slang. Witnesses may testify about information they learn in the course of their everyday lives.

STATEMENT OF FACTS

Basilio Case

On May 15, 2021, Kristen Dziegielewski was sitting outside the back of her home when she noticed "a man that seemed kind of slightly out of the norm."[20] He was wearing a sweatshirt that all but covered his face.[21] He rode a bicycle around the area multiple times before turning left onto Kirkwood Highway, toward a MetroPCS store.[22]

Shortly thereafter, surveillance footage captured a masked man walking into the MetroPCS with a revolver in his right hand.[23] He murdered Leslie Basilio, the store clerk, by shooting her in the head at close range.[24] He robbed the store, stealing more than 20 phones.[25] When Amanda Masteller, Gibson's friend, later watched the surveillance video, she identified Gibson as the shooter.[26]

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[20] B007.
[21] B007.
[22] B007.
[23] *See* B119; B189–90.
[24] B016–17; *see also* B190.
[25] B030; *see also* B190.
[26] B117–18.

Gibson also stole Basilio's Cadillac Escalade.[27] Four days later, the police would locate the vehicle near 2421 North 19th Street in Philadelphia—walking distance from Gibson's residence.[28]

On the day of the murder, the police found a Retrospec bicycle about a block and a half away from the MetroPCS store.[29] The manufacturer told police that five dealers in the tri-state area sold their bicycles, and all five were in Pennsylvania.[30]

Kayuh Bicycles and Café, a bicycle shop located in North Philadelphia, had a sales receipt indicating that a customer named "Keith Gibson" bought a blue Retrospec bicycle, with the serial number TH200510751, on January 23, 2021.[31] The serial numbers on the receipt and the recovered bicycle matched.[32] The shop had two more related receipts: first, for an account deposit indicating that a customer named "Keith Gibson" dropped off the bicycle for service on May 13, 2021, and second, for the payment of services and purchase of cable lock by a customer named "Keith Gibson" on

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[27] *See* B019–20; B024; B030.
[28] B019–20; B174–75; *see also* B190.
[29] B008; B029.
[30] B008.
[31] B099–100; *see also* B189.
[32] B100; B114; *see also* B189.

May 14, 2021.[33] When Gibson was later arrested, he was in possession of keys that fit the lock.[34]

Masteller also identified the recovered bicycle as Gibson's.[35] She last saw Gibson with the bicycle in May 2021.[36] When she asked what happened to it, Gibson stated that it was stolen while he was "doing a lick," meaning a "committing a robbery."[37]

The day after the murder, one of the stolen phones was activated under the name "Navone Stinson."[38] The police traced the phone's location, set up surveillance, found Stinson, and seized the phone.[39] At the time, the contents of the phone seemed insignificant.[40] But when Gibson was arrested, he provided the phone number (267) 243-3272.[41] That number matched a contact labeled "The Beast"—Gibson's nickname—in the phone recovered from Stinson.[42]

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[33] B100.
[34] B098; *see also* B189–90.
[35] B114; *see also* B189.
[36] B116.
[37] B115–16.
[38] B030–31.
[39] B031.
[40] B031.
[41] B031.
[42] B031.

The police later examined the contents of Gibson's cell phone.[43] The examination revealed that, on the day of Basilio's murder, the phone had no activity between 4:43 p.m. and 6:30 p.m.—not even in the background—suggesting that Gibson turned off the phone.[44] And it was during this time that Basilio was murdered.[45]

A forensic firearms examiner analyzed the bullet that killed Basilio.[46] It was too damaged to make any direct comparisons, but it was coated with a dark-blue nylon material consistent with Nyclad.[47] The examiner had not seen Nyclad-coated bullets for 20 years, despite conducting thousands of examinations during that time.[48]

Wright Case

Ronald Wright sold crack cocaine from 1200 West 3rd Street in Wilmington and usually kept his drugs in a black sling bag.[49] On June 5, 2023, Wright's friend Walter Davis was leaving the house

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[43] B089.
[44] B089–90.
[45] *See* B195.
[46] B103–04; *see also* B195.
[47] B104; *see also* B195.
[48] B104–05.
[49] B035; B086; B150–51.

when an unknown man knocked at the door.[50] He had a dark complexion, was clean shaven, and wore glasses and a hooded sweatshirt.[51]

Davis was standing about 50 feet from his doorstep when he heard a muffled boom sound.[52] He saw two addicts who hung around the house running from it.[53] Davis eventually called 911.[54]

When the police arrived, they found Wright lying on his back with trauma to his head.[55] EMS pronounced him dead on the scene.[56]

The police were unable to locate any shell casings at the scene, indicating that a revolver may have been used.[57] Underneath Wright's body, they found what appeared to be fragments of a projectile.[58] A forensic firearms examiner determined the objects were two portions of a frangible bullet—a bullet designed to break apart on impact.[59] The portions were not suitable for comparison but belonged to the .38-

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[50] B034; B037–38.
[51] B038.
[52] B035; B037.
[53] B035; B037.
[54] B035–36.
[55] B040; B050.
[56] B043.
[57] *See* B056–57; B190–91.
[58] B058.
[59] B137; *see also* B191–92.

caliber class and had eight lands, eight grooves, and a right-hand twist.[60]

The police later seized a sling bag from Gibson at the time of his arrest.[61] Wright's sister identified that bag as Wright's.[62] Thomas Nicastro, a man who purchased drugs from Wright, also said the recovered bag resembled the one Wright used.[63]

Masteller identified Gibson as the man walking around in surveillance footage from the area.[64]

Almansoori Case

On June 6, 2023, Gibson shot and wounded Belal Almansoori while robbing the Good Guys deli.[65] Masteller identified him from the surveillance video.[66] A second witness, Reyna Medina, saw Gibson in the area around the time of the shooting.[67]

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[60] B137; *see also* B191–92.
[61] *See* B192–93.
[62] B150–51.
[63] B086.
[64] B118; *see also* B191.
[65] *See* B192.
[66] B118; *see also* B192.
[67] *See* B192.

The surveillance footage showed Gibson carrying a revolver in his right hand and firing multiple shots toward Almansoori's head.[68] Gibson was wearing gloves with a logo that appeared to resemble Copper Fit's.[69] Almansoori survived but spent months in the hospital and recovery.[70]

The police recovered fragments of frangible bullets from the scene.[71] They were .38-caliber class, with eight lands, eight grooves, and a right-hand twist.[72]

Collins Case

On June 8, 2021, Sandra Collins, a cashier at Rite Aid, was at the register when two men wearing hooded sweatshirts, masks, and gloves came in to rob the store.[73] One man displayed a revolver, which he held in his right hand, and pointed it at Collins.[74] He handed

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[68] *See* B192.
[69] *See* B192–93.
[70] *See* B192.
[71] B058–59; B140–41; *see also* B192.
[72] B140–41; *see also* B102.
[73] B153–54.
[74] B156; B158; *see also* B193.

her a bag and asked for money from the register.[75] Collins put the money and a GPS security pack in the bag.[76]

The police tracked the GPS security pack to the 800 block of West Street.[77] An officer went behind the homes and saw someone by the fence of an adjoining yard.[78] He pursued the person and found Gibson hiding behind a handicap ramp.[79]

The police found a Rohm .357 revolver underneath that ramp.[80] The revolver fit the holster that was seized from Gibson at the time of his arrest.[81] One of the bullets in the chamber was frangible and another was Nyclad-coated.[82] Gibson had another .38-caliber round and Copper Fit gloves in his pocket.[83] A ballistics examination linked the revolver to the June 5, 2021 robbery and murder of Christine Lugo at a Philadelphia Dunkin Donuts.[84]

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[75] B156; B158.
[76] B157; B159.
[77] *See* B193.
[78] *See* B193.
[79] *See* B193.
[80] *See* B190; B193.
[81] *See* B190; B193.
[82] B141–42; *see also* B190; B195.
[83] *See* B142; B193.
[84] *See* B190.

ARGUMENT

I. The Superior Court appropriately maintained joinder of the charges related to the Wright case, on the one hand, with those related to the Basilio and Almansoori cases, on the other.

Question Presented

Whether the Superior Court abused its discretion by not severing the counts of the indictment related the Wright case from the counts concerning the Basilio and Almansoori cases.

Scope of Review

This Court reviews the decision to grant or deny a motion for severance for abuse of discretion.[85] "As a general rule, the denial of a motion to sever results in an abuse of discretion when there is a reasonable probability that substantial prejudice may have resulted from a joint trial."[86] The trial court's decision "will not be overturned by this Court in the absence of a showing of prejudice by the defendant."[87]

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[85] *Skinner v. State*, 780 A.2d 1037, 1055 (Del. 2001).
[86] *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988).
[87] *Id.*

Merits of Argument

Before trial, Gibson moved to sever the counts of his indictment for separate trials.[88] He asked the Superior Court to group together what he called the "business robberies"—the Basilio, Almansoori, and Collins cases, which occurred at MetroPCS, the Good Guys deli, and Rite Aid, respectively—and separate out the Wright and Harris cases.[89] The court granted severance but grouped the counts differently.[90] It maintained joinder of the Wright case with the Basilio, Almansoori, and Collins cases; it severed the Harris and drug-dealing cases.[91]

Gibson claims that "the trying of the Wright murder in the same trial as the Basilio and Almansoori trials . . . denied [him] the right to a fair trial."[92] According to Gibson, "the jury, hearing of the bad acts referenced in the Ronald Wright murder, [was] unduly influenced by inadmissible evidence of prior bad acts when considering the evidence in the trial of the Basilio and Almansoori cases."[93]

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[88] *Gibson*, 2022 WL 16642860, at *1.
[89] *Id.*
[90] *Id.* at *4.
[91] *Id.*
[92] Opening Br. 20.
[93] Opening Br. 20.

Under Superior Court Criminal Rule 8(a), two or more offenses may be charged in the same indictment "if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan." Joining offenses within a single indictment promotes judicial economy and efficiency, so long as the joinder is consistent with the rights of the defendant.[94] Rule 14 permits the court to order separate trials or other necessary relief if it appears that a party will be prejudiced by the joinder.[95]

Rules 8 and 14 must be read together.[96] Accordingly, the inquiry on review is two parts: first, whether the charges were properly joined in the first instance under Rule 8(a), and second, whether the Superior Court should have severed the offenses as prejudicial under Rule 14.[97]

Gibson does not challenge this initial joinder of the Wright case with the Basilio and Almansoori cases in the indictment. Indeed, their joinder was appropriate because the charges in each case were of the

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[94] *Wiest*, 542 A.2d at 1195.
[95] *Id.*
[96] *Jackson v. State*, 990 A.2d 1281, 1286 (Del. 2009).
[97] *Id.*

same or similar character. The charges were not only from the same subchapters of the Delaware Code,[98] they were largely from the same sections. Even the additional charge in the Wright case, second-degree assault, is found in the same subchapter as murder, "Offenses Against the Person,"[99] and can be a lesser-included offense of it.[100]

Gibson focuses his argument on the second part of the inquiry, whether the offenses should have been severed as prejudicial under Rule 14. In *Wiest*, this Court identified three types of prejudice that might occur from the joinder offenses: (i) that the jury might cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not; (ii) that the jury might use evidence of one crime to infer a general criminal disposition and convict the defendant of the other crime crimes based on it; and (iii) that embarrassment or confusion might result from the defendant presenting different defenses to different charges.[101] Gibson claims that the first two types of prejudice occurred here.[102]

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[98] *See Winer v. State*, 950 A.2d 642, 649 (Del. 2008).
[99] 11 *Del. C.* §§ 612, 636.
[100] *Ward v. State*, 575 A.2d 1156, 1158 (Del. 1990).
[101] 542 A.2d at 1195.
[102] Opening Br. 22.

The defendant bears the burden of demonstrating prejudice from the denial of severance.[103] An assertion of "mere hypothetical prejudice is not sufficient."[104] Nor is the "potential for prejudice inherent in a joint trial of separate offenses."[105] If the defendant does not substantiate his claim of prejudice, then the interests of judicial economy will outweigh his own.[106]

Gibson's allegation of prejudice is not substantial. He identifies cumulation as a type of potential prejudice and states: "Such was the case here."[107] He then identifies inference of criminal disposition as a type of potential prejudice and states: "This form of prejudice predictably occurred in the instant case."[108] He later adds that it was "highly likely that the jury cumulated the evidence of various crimes charged" and "further likely that the jury used the evidence of the Basilio and Almansoori cases to infer [Gibson's] general criminal disposition in order to find guilt of the Ronald Wright murder."[109]

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[103] *Wiest*, 542 A.2d at 1195.
[104] *Skinner*, 575 A.2d at 1118.
[105] *Id.*
[106] *Jackson*, 990 A.2d at 1287.
[107] Opening Br. 22.
[108] Opening Br. 22.
[109] Opening Br. 23.

These statements are conclusory: they do not explain how the prejudice supposedly occurred and do not point to evidence that it did.

The substance of Gibson's argument rests on the contention that evidence from the Wright case would not have been admissible in the Basilio and Almansoori trials, and vice versa.[110] Reciprocal admissibility is "a crucial factor to be considered in making a final determination on the motion [to sever]."[111]

D.R.E. 404(b) governs the admission of evidence of other crimes, wrongs, or acts. Such evidence is not admissible to prove a person's character and to show that he acted in accordance with that character on a particular occasion.[112] It *is* admissible, however, for other, proper purposes—like proving motive, plan, or identity.[113] When considering the admissibility of evidence offered under D.R.E. 404(b), a trial court must evaluate it under the five factors set forth in *Getz v. State*.[114]

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[110] Opening Br. 22–23.
[111] *Wiest*, 542 A.2d at 1195 n.3.
[112] D.R.E. 404(b)(1).
[113] D.R.E. 404(b)(2).
[114] 538 A.2d 726, 734 (Del. 1988).

The first *Getz* factor requires the other-crime evidence to be material to an issue or ultimate fact in dispute at trial.[115] Relatedly, under the second factor, the other-crime evidence must be introduced for a proper purpose, such as those identified within D.R.E. 404(b).[116] Third, the other crime must be proven by plain, clear, and conclusive evidence.[117] Fourth, the other crime must not have occurred too remote in time from the charged offenses[118]—as a rule of thumb, within 10 years from each other.[119] Finally, the fifth *Getz* factor requires the other-crime evidence to be reviewed under D.R.E. 403 to determine whether its prejudicial effect substantially outweighs its probative value.[120] In *Deshields v. State*,[121] this Court identified nine factors to consider when conducting this balancing test: (i) the extent to which the point to be proved is disputed; (ii) the adequacy of proof of the other conduct; (iii) the probative force of the evidence; (iv) the proponent's need for the evidence; (v) the availability of less

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[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Allen v. State*, 644 A.2d 982, 988 (Del. 1994).
[120] *Getz*, 538 A.2d at 734.
[121] 706 A.2d 502, 506–07 (Del. 1998).

prejudicial proof; (vi) the inflammatory or prejudicial effect of the evidence; (vii) the similarity of the prior wrong to the charged offense; (viii) the effectiveness of limiting instructions; and (ix) the extent to which prior-act evidence would prolong the proceedings.

Finally, if the trial court admits the other-crime evidence after consideration of these five factors, it must instruct the jury on the limited purpose for its admission.[122]

Wright makes his argument under the first and fifth *Getz* factors.[123] He first claims that evidence of the Wright murder "was not material to whether or not Gibson was guilty of the Basilio murder or the attempted murder of Almansoori."[124] He further claims that the "probative value [of the evidence], that [Gibson] was committing all of these offenses to obtain money, was critically outweighed by the prejudice incurred."[125] According to Gibson, the probative value of the evidence was modus operandi, and the Wright murder was not

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[122] *Getz*, 538 A.2d at 734 (citing D.R.E. 105).
[123] Opening Br. 20–23.
[124] Opening Br. 20.
[125] Opening Br. 23.

sufficiently similar to the robberies that occurred at legitimate, brick-and-mortar businesses to carry any substantial weight.[126]

The probative value of the evidence was stronger than Gibson's characterization, however.

As a preliminary matter, the State presented persuasive independent proof that Gibson committed each series of offenses, including identifications in surveillance footage, connections through ballistics evidence, the location of his bicycle near the scene of one murder, the location of one victim's vehicle near his home, and his possession of items stolen from his victims. Based on such evidence, a factfinder could independently find that Gibson committed the offenses charged against Wright and those against Basilio and Almansoori. Thus, any evidence linking the cases together would make Gibson's identity as the shooter in one case probative of his identity in the other. Such evidence existed here.

As the Superior Court found in its pretrial ruling, a modus operandi linked the cases together: Gibson, armed with a revolver, entered the building of a money-making enterprise and harmed or

[126] *See* Opening Br. 23.

threatened people for the purpose of stealing its proceeds.[127] The evidence admitted at trial strengthened and supplemented this finding. Not only did Gibson harm Wright, Basilio, and Almansoori, he did so by firing his revolver at their heads. Moreover—and significantly—Wright and Almansoori were both shot with frangible bullets. The fact that the same type of firearm and uncommon ammunition[128] were used made it more likely that the shooter in each case was the same person.

Reciprocal admission of this evidence in separate trials would satisfy the *Deshields* balancing test. The identity of the offender was the main point of dispute at trial. Gibson attempted to mask his appearance, so the State needed to introduce evidence of his identity. The different cases were similar because they involved nearly identical charges and a common modus operandi. For that reason, the other-crime evidence was probative of identity in all cases and adequately proven. Gibson does not identify prejudice beyond the

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[127] *Gibson*, 2022 WL 16642860, at *4.

[128] The officer from the Wilmington Police Department's Forensic Services Unit who found and collected the portions of the frangible bullet from the scene of Wright's murder testified that, despite being to many crime scenes and collecting a lot of ballistics evidence, he "wasn't sure exactly what it was." B058.

hypothetical prejudice that is inherent in any joinder. When all cases involve a shooting to the head, their reciprocal admission does not have a further inflammatory effect beyond what the jury was already subjected to. Even if arguably less prejudicial proof of identity was available, it was not necessarily sufficient in a case where identity was the primary dispute for all charges. Admitting the evidence would reduce the length of the proceedings in the aggregate, rather than prolong them, because Gibson faced trial in the Superior Court on all offenses either way. Finally, a limiting instruction could have been given if the cases were tried separately and would have been effective. Here, all other crimes were charged offenses and tried together, so it was sufficient for the Superior Court to instruct the jury to consider each offense separately: "You will be required to reach a separate verdict for each offense. Each verdict must be independent of your decision on any other."[129] For these reasons, and contrary to Gibson's claim on appeal, the prejudicial effect of the reciprocal evidence did not substantially outweigh its probative value.

[129] B219.

When considering a motion to sever, the trial court ultimately must balance the defendant's rights against "the legitimate concern for judicial economy."[130] Charges may be tried together if they are logically and temporally connected.[131] When the evidence related to the different offenses is inextricably intertwined, the trial court acts well within its discretion by maintaining the joinder.[132]

The Wright case was logically and temporally connected with the Basilio and Almansoori cases. They involved the same perpetrator (Gibson), occurred in the same general area (Wilmington and Elsmere), occurred close in time (within a three-week period), and involved a similar plan or execution (the robbery of a money-making enterprise and shooting in the head with a revolver). A common modus operandi ran through the cases, and ballistics evidence further linked them together. Maintaining joinder of the cases was not an abuse of discretion.

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[130] *Ashley v. State*, 85 A.3d 81, 85 (Del. 2014).
[131] *Cannon v. State*, 2010 WL 1543852, at *3 (Del. Apr. 19, 2010).
[132] *Taylor v. State*, 76 A.3d 791, 801 (Del. 2012).

II. The Superior Court did not abuse its discretion by denying Gibson's motion to suppress evidence seized from his iPhone.

Question Presented

Whether the Superior Court should have suppressed evidence seized under the November 8, 2021 search warrant for contents of Gibson's iPhone.

Scope of Review

This Court reviews the denial of a motion to suppress evidence seized under a search warrant for an abuse of discretion.[133] The trial court's factual findings will be reversed only if they are clearly erroneous.[134] Legal and constitutional questions, except the magistrate's determination of probable cause, are reviewed *de novo*.[135] The magistrate's determination is paid "great deference" and reviewed only for whether a substantial basis for finding probable cause existed under the totality of the circumstances.[136]

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[133] *Rybicki v. State*, 119 A.3d 663, 668 (Del. 2015).
[134] *Loper v. State*, 8 A.3d 1169, 1172 (Del. 2010).
[135] *Rybicki*, 119 A.3d at 668; *Hall v. State,* 788 A.2d 118, 123 (Del. 2001).
[136] *Rybicki*, 119 A.3d at 668.

Merits of Argument

The police seized an iPhone from Gibson at the time of his arrest.[137] They first obtained a warrant to search the contents of the phone on June 23, 2021.[138] On November 8, 2021, they obtained a second warrant that was similar in substance but refined in scope.[139] The police extracted evidence from the phone under the November warrant.[140]

Gibson filed a pretrial motion to suppress the evidence seized from his phone.[141] When he filed the motion, he had not yet received the November warrant in discovery.[142] His motion was therefore based on the inconsequential June warrant that he had received already.[143] Accordingly, the Superior Court deferred its ruling to give Gibson the opportunity to consider the operative warrant and file a new motion.[144] Gibson later filed supplemental briefing, and the

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[137] *See* A284 ¶ 26.
[138] *Gibson*, 2022 WL 16642860, at *6.
[139] *Id.*
[140] *Id.*
[141] *Id.* at *5–6.
[142] *Id.* at *6.
[143] *Id.*
[144] *Id.*

Superior Court heard argument on the motion.[145] In the course of denying the motion, the Superior Court noted that the November warrant did not contain much of the objectionable content from the June warrant, such as the "any and all" language that Gibson contested.[146]

Gibson argues on appeal that the Superior Court abused its discretion by denying the motion to suppress.[147] As an initial matter, it must be noted that Gibson appears to base a substantial portion of his argument on the wrong search warrant. For example, he claims that the warrant sought information from April 27, 2021, to June 8, 2021—but that was the date range for the June warrant.[148] The November warrant was limited to the dates of May 10, 2021, to June 8, 2021.[149] Gibson also contends that the warrant did not seek location data,[150] but the November warrant sought this type of evidence explicitly.[151] There are many other such incorrect references

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[145] *Gibson*, 2023 WL 7004105, at *1.
[146] *Id.* at 4.
[147] Opening Br. 24–38.
[148] Opening Br. 24–25 & nn.109–10.
[149] A279.
[150] Opening Br. 32–33.
[151] A279.

throughout Gibson's argument. Indeed, most of the argument appears to target alleged deficiencies that existed in the June warrant but not the November warrant.

Overall, Gibson claims that the warrant for the contents of his phone was an unconstitutional general warrant.[152] The arguments supporting his claim fall into two principal categories: first, that the warrant lacked sufficient particularity, and second, that the affidavit to the warrant failed to establish a logical nexus between the Gibson's phone and the alleged crimes.[153] Some of his more specific points, if liberally construed, might apply to the November warrant.

But when applied to the November warrant, those arguments fail. The November warrant was sufficiently particular and established a nexus between Gibson's phone and the crimes,

The Fourth Amendment to the United States Constitution and Article I, § 6 of the Delaware Constitution both guarantee the right of the people to be free from unreasonable searches and seizures. Both require warrants to be particularly stated and supported by probable

[152] *See* Opening Br. 30.
[153] *See* Opening Br. 29.

cause. The Delaware Code sets further requirements for warrant applications.[154]

Probable cause exists when, under the totality of circumstances, there is a fair probability that contraband or evidence of a crime will be found in the particular place to be searched.[155] There must be a logical nexus between the items sought and the place to be searched.[156] Facts adequate to support a finding of probable cause must be included within the four corners of the affidavit.[157]

Courts recognize that the particularity requirement "present[s] unique challenges" when applied to digital information.[158] The search of a cell phone, for example, gives the government access to far more information than even the most exhaustive search of a house.[159] Furthermore, the nature of digital information means that relevant and irrelevant information will be commingled and difficult to discern before conducting the search.[160] Consequently, *ex ante* restrictions on

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[154] *E.g.*, 11 *Del. C.* § 2307(a).
[155] *Cooper v. State*, 228 A.3d 399, 405 (Del. 2020).
[156] *Id.*
[157] *Id.*
[158] *Wheeler v. State*, 135 A.3d 282, 299 (Del. 2016).
[159] *Riley v. California*, 573 U.S. 373, 396–97 (2014).
[160] *Wheeler*, 135 A.3d at 299–300.

what files may be searched would likely unduly restrict law enforcement, and "[s]ome irrelevant files may have to be at least cursorily perused to determine whether they are within the authorized search ambit."[161] To satisfy the particularity requirement, a warrant for electronically stored information "must describe what investigating officers believe will be found on electronic devices with as much specificity as possible under the circumstances."[162]

This Court has developed standards for evaluating warrants seeking digital or electronic information. A search for "any and all information" that is "pertinent to the investigation" does not reasonably limit the scope of the search.[163] Warrants should not describe the place to be searched using open-ended language such as "including but not limited to."[164] The particular categories of data sought, such as GPS location information or photographs, must be justified by probable cause.[165] Where relevant dates are available, the warrant should contain temporal constraints.[166] Statements such as

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[161] *Id.* at 301.
[162] *Id.* at 304.
[163] *Id.* at 616; *Buckham v. State*, 185 A.3d 1, 18–19 (Del. 2018).
[164] *Taylor v. State*, 260 A.3d 602, 615 (Del. 2021).
[165] *Buckham*, 185 A.3d at 19.
[166] *Wheeler*, 135 A.3d at 304–05.

"criminals often communicate through cell phones" are insufficient to establish a nexus to the alleged crimes.[167]

The November warrant used to extract information from Gibson's iPhone was sufficiently limited in scope and did not authorize an indiscriminate, top-to-bottom search of the phone.

First, it sought permission to conduct a "forensic examination for the digital contents" of the phone and "any attached storage device."[168] In this context, the use of the word "any" is not problematic. Cell phones are relatively small, and there is only so much opportunity for an external storage device, such as a flash drive, to be physically attached to it. The language did not create an undefined universe of places to be searched.

The search also contained temporal limitations tied to the occurrence of the alleged offenses. The search was limited to the period of May 10, 2021—just five days before the Basilio murder—to the date of his arrest, June 8, 2021.[169] It was reasonable to start the

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[167] *Buckham*, 185 A.3d at 17.
[168] A279.
[169] A279; *see also* A284 ¶ 26.

period a few days before the first offenses, when Gibson could have begun his preparation.[170]

The search was further limited by the categories of information sought. The November warrant sought only seven categories of information, all qualified by whether the information was related to the alleged offenses: (i) call logs; (ii) GPS or other location-based data; (iii) text and multimedia messages; (iv) internet and browser history; (v) an address book and contact list; (vi) images and videos; and (vii) information that may identify the owner of the phone.[171] Probable cause supported the search for each of these categories of information.

The affidavit indicated that Gibson provided his phone number to Probation and Parole,[172] thereby linking him to the phone seized. Security footage from the MetroPCS store showed that Basilio's killer had a cell-phone holder on his hip, and a phone appeared to be in it.[173] Later that evening, home surveillance footage captured the suspect

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[170] *Gibson*, 2023 WL 7004105, at *4.
[171] A279.
[172] A281 ¶ 9.
[173] A281 ¶ 11.

exiting Basilio's stolen vehicle.[174] As he walked down the street, his phone illuminated, he picked it up, he checked it, and he appeared to begin sending a text message to someone.[175] When the police discovered that one of the phones stolen from MetroPCS was activated, they found Gibson's phone number under the contact labeled "Beast," Gibson's nickname—indicating that he communicated with people using the stolen contraband after the robbery and murder.[176] Later, on June 8, 2021, police arrested Gibson within minutes of the robbery of Collins at Rite Aid, and Gibson had his phone on his belt.[177]

During a June 15, 2021 witness interview, the police learned that Gibson was active on his cell phone on the dates of the alleged offenses, sometimes within a half hour of them.[178] During one exchange, Gibson stated, "The phone can be harmful"[179]—an apparent reference to preparations for his imminent criminal activity.

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[174] A282 ¶ 15.
[175] A282 ¶ 15.
[176] *See* A282 ¶ 16.
[177] A284 ¶ 26.
[178] A285 ¶ 29.
[179] A285 ¶ 29.

First and foremost, these facts supported the search of GPS and location data in Gibson's phone. The communication history demonstrated that Gibson was in possession of the phone around the time of the offenses, sometimes within minutes. These facts, along with the video surveillance and his arrest with the phone, made it at least fairly probable that Gibson possessed the phone while committing the offenses. Thus, information about the phone's location would tend to prove Gibson's location, as well.

The history of communication also justified the search for the call logs, messages, and the address book. If the evidence is pulled from Gibson's end of the conversation, it is more closely connected to him and thus more probative of his activity than the witness's account. Moreover, Gibson demonstrated that he would reference his criminal activity in text messages, signaling that further incriminating evidence might exist there.

Gibson's criminal activity further justified seeking the call logs, messages, and address book, as well as the internet history, images, and videos. The man who possessed and activated a phone stolen from MetroPCS saved Gibson as a contact, which indicated that Gibson was using his phone to communicate with people involved in

the transfer of the stolen merchandise.[180] Furthermore, Gibson was a person prohibited from possessing a firearm. It was therefore reasonable to conclude that, to procure the revolver, Gibson used the iPhone to find and communicate with people illegally selling firearms.[181] As the Superior Court observed, such communications often include photographs, videos, and other information exchanged during the negotiation of the sale.[182]

And, of course, information confirming the identity of the phone's owner would be relevant for proving Gibson's control over it—and any incriminating evidence found within.

For all these reasons, the November warrant was sufficiently particular, and it established a logical nexus between Gibson's phone and the crimes. The affidavit contained more than mere allegations of Gibson's general possession and use of the phone. The reach of the warrant was tied to the relevant timeframe and categories of information. It did not use open-ended language like "any and all" or "including but not limited to" to define the scope of the search.

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[180] *Gibson*, 2023 WL 7004105, at *4.
[181] *See id.*
[182] *Id.*

Therefore, the Superior Court correctly concluded that the warrant was not overbroad and that "the affidavit established probable cause to believe that Gibson committed the crimes described, that he had the iPhone on the dates the crimes were committed, and that there was a logical nexus between the crimes and the iPhone."[183]

Even if this Court concludes that evidence seized under the November warrant should have been suppressed, the admission of that evidence at trial was harmless error. An error in admitting evidence is harmless "where the evidence admitted at trial, other than the improperly admitted evidence, is sufficient to sustain the defendant's conviction."[184] If the evidentiary error "is of a constitutional magnitude, the convictions may be sustained if the error is harmless beyond a reasonable doubt."[185]

Gibson argues that evidence from the phone was significant, pointing to the testimony of the State's cell-phone expert, who stated that Gibson turned off the phone shortly before the Basilio murder and

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[183] *Id.* at *5.
[184] *Miller v. State*, 1993 WL 445476, at *3 (Del. Nov. 1, 1993).
[185] *Nelson v. State*, 628 A.2d 69, 77 (Del. 1993) (internal quotation marks omitted).

turned it back on shortly thereafter.[186] This information permitted the jury to infer that Gibson was trying to hide his whereabouts during the Basilio murder.[187]

Nevertheless, the State's other evidence, independent of the cell-phone evidence, proved that Gibson murdered Basilio while robbing the MetroPCS store. Gibson's bicycle was recovered nearby.[188] Masteller identified Gibson as the shooter in the surveillance footage.[189] Basilio was murdered with an uncommon Nyclad-coated bullet, and another such bullet was found in the chamber of the revolver seized when Gibson was arrested.[190] Basilio's Escalade was later found in North Philadelphia, near where Gibson lived.[191] This evidence, separate and apart from the cell-phone evidence, was sufficient for the jury to convict Gibson of the robbery and murder of Basilio beyond a reasonable doubt.

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[186] *See* Opening Br. 36–38.
[187] Opening Br. 38.
[188] B114; *see also* B189.
[189] B117–18.
[190] B104–05; *see also* B190; B195.
[191] *See* B019–20.

III. The Superior Court did not abuse its discretion by admitting the portion of a surveillance video that showed Gibson entering the store he robbed by grabbing and pushing the employee he killed inside.

Question Presented

Whether the segment of an admissible surveillance video showing Gibson grabbing and pushing an employee into the store, where he then robbed and killed her, is admissible under D.R.E. 404(b) in a serial-robbery-and-murder trial.

Scope of Review

This Court reviews a trial court's decision to admit evidence under D.R.E. 404(b) for abuse of discretion.[192]

Merits of Argument

Before trial, the State filed a sealed motion to admit evidence under D.R.E. 404(b) of the June 5, 2021 robbery and murder of Lugo at a Dunkin' Donuts in Philadelphia.[193] The State sought admission of the evidence to prove Gibson's identity as Basilio's killer.[194] Gibson

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[192] *Morse v. State*, 120 A.3d 1, 8 (Del. 2015).
[193] *See Gibson*, 2023 WL 7004105, at *1 & n.3.
[194] *Id.* at *10.

opposed, arguing that the evidence did not tend to prove identity.[195] The Superior Court evaluated the motion under the factors set forth in *Getz* and *Deshields* and granted the motion.[196] The court allowed the State to present the Dunkin' Donuts surveillance video that captured the incident (with the shooting itself redacted) and testimony about the collection of a projectile from the scene.[197]

During trial, Gibson raised a second, narrower objection to the Dunkin' Donuts surveillance video under D.R.E. 404(b), to "a portion early in the video where the individual approaching the Dunkin' Donuts grabs the victim and sort of forcefully pushes her into the Dunkin' Donuts."[198] Gibson argued that, in the robberies of the Delaware stores, the suspect did not have any physical altercation with the store clerk.[199] Consequently, it was not part of the modus operandi and was simply prejudicial, depicting Gibson as someone who commits violence against women.[200] The Superior Court adopted

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[195] *Id.*
[196] *Gibson*, 2023 WL 7004105, at *10–12 (applying *Getz*, 538 A.2d at 734, and *Deshields*, 706 A.2d at 506–07).
[197] *Id.* at *12.
[198] B063–64; B079–81.
[199] B063–64.
[200] B063–64; B079–80.

its *Getz* analysis from its earlier written opinion and overruled the objection.[201] The court found that, in a case where the jury will see several videos of shootings, the brief grabbing of Lugo's shirt and pushing her into the store was "incredibly de minimis" and would not increase the likelihood of the jury viewing him as a bad person.[202] Consequently, it "d[id] not change anything from that [earlier] analysis."[203]

On appeal, Gibson renews the narrower objection to the early portion of the video that showed him grabbing and pushing Lugo into the Dunkin' Donuts.[204] He contends that this short portion of the video was not material and was not introduced for a proper purpose, that its "probative value . . . did not outweigh its prejudicial effect," and that the "natural and inevitable tendency of the jury would be to give excessive weight to the abusive nature of the physical abuse, justifying a condemnation of [Gibson] as a woman abuser and irrespective of . . . Gibson's guilt of the present charge."[205]

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[201] B080–81.
[202] B080.
[203] B080.
[204] Opening Br. 40–41.
[205] Opening Br. 40–41.

The Superior Court did not abuse its discretion by allowing the State the play the short grab-and-push segment of the Dunkin' Donuts video. In the context of the trial involving multiple robberies and homicides, the brief altercation between Gibson and Lugo was *de minimis*. Moreover, the alleged prejudice—that the jury would conclude Gibson was a woman abuser—was hypothetical and not supported by the record.

The Superior Court accurately applied the *Getz* factors, as incorporated from its written opinion, to the short segment of the video.

First, the video was material to an issue or ultimate fact in dispute—the identity of Basilio's killer—and introduced for that proper purpose. As the Superior Court described:

> [T]he two incidents are nearly identical . . . . But these commonalities become even more compelling when one observes the video depiction of the perpetrators in each incident. The videos allow the viewer to compare, over an extended period of time, other characteristics of the men, including their mannerisms, gait, demeanor, and overall bearing.[206]

[206] *Gibson*, 2023 WL 7004105, at *11.

The early portion of the video surveillance is part and parcel of this material evidence. It depicts the initiation of the robbery and provides context for how the crime developed. It depicts the characteristics identified above—such as the assailant's mannerisms and demeanor—as well as Gibson's face. Whether the grab and push into the store was part of the modus operandi running through the cases does not negate the other reasons it was material.

Although there is precedent for redacting out prejudicial portions of video evidence,[207] *Getz* does not require the State to chop up its evidence to show only the "most material" portions. There is no grading system where "prime" cuts of a video are admissible but "choice" or "standard" cuts are not. If the evidence is material and admitted for a proper purpose—as this portion of the video was—then exclusion must be based on a different *Getz* factor.

The other factor that Gibson argues is the fifth, that the prejudicial effect of the evidence substantially outweighs its probative value. The Superior Court weighed the *Deshields* factors in context and reasonably concluded that the grab-and-push segment of the

[207] *E.g.*, *Mason v. State*, 963 A.2d 124, 127 (Del. 2009).

video, when juxtaposed against the fact of the robbery and murder that would ensue, was *de minimis* and did not change the analysis.

Gibson's argument that the grab-and-push segment of the video only served to portray him as a woman abuser is not supported by the record or the context of his charges. Gibson was not charged with crimes of domestic violence, sexual assault, or other offenses that by their nature might show contempt toward women. In fact, Gibson was tried in these very proceedings for the murder and attempted murder of two men, Wright and Almansoori. The common thread between the victims is their status as an employee of the targeted money-making enterprise, not their sex. The notion that the jury might conclude that Gibson had a predilection of violence toward women, specifically, is purely hypothetical.

For all these reasons, the Superior Court did not abuse its discretion by admitting the Dunkin' Donuts evidence, including the portion of the surveillance video showing Gibson grabbing and pushing Lugo inside the store to commit the robbery.

IV. The Superior Court did not abuse its discretion by admitting the bicycle-shop receipts under an exception to the rule against hearsay.

Question Presented

Whether sales and service receipts were admissible under D.R.E. 803(15) or 807.

Scope of Review

This Court reviews the decision to admit or exclude hearsay for an abuse of discretion.[208]

Merits of Argument

The police found Gibson's blue Retrospec bicycle within a five-minute walk of the MetroPCS where Basilio was murdered. Masteller identified the bicycle as Gibson's. The State sought to corroborate and strengthen that identification by matching the bicycle's serial number to Gibson's purchase history. It did so by offering sales receipts from the shop where Gibson purchased the bicycle.

[208] *Foster v. State*, 961 A.2d 526, 529–30 (Del. 2008).

Gibson objected to admission of the receipts, arguing that they were hearsay without exception. The Superior Court overruled the objection, finding the receipts to be admissible under both D.R.E. 803(15), the exception for documents affecting an interest in property, and D.R.E. 807, the residual exception.

On appeal, Gibson challenges the admission of the receipts under D.R.E. 803(15). He contends that the exception "was meant to apply to dispositive documents such as a deed, and not a bicycle shop receipt."[209] He further argues that the receipt does not establish or affect any interest in property, as the rule requires.[210]

Gibson's claim fails on several counts. First, he does not challenge the admission of the receipts under D.R.E. 807 and has therefore waived any such challenge. Second, the receipts were nevertheless admissible under D.R.E. 803(15). But finally, even if they were not, the error in admitting them was harmless.

The Superior Court admitted the receipts under alternative authorities: D.R.E. 803(15) and 807. In his opening brief, Gibson

[209] Opening Br. 44.
[210] Opening Br. 45.

argues against the receipts' admissibility under the former rule but not the latter.

The appellant is generally entitled to frame the issues presented on appeal.[211] If he does not raise a legal issue in the text of his opening brief, he normally waives the argument, and this Court will not consider it.[212] For example, in *Murphy*, the defendant appealed the denial of his motion to suppress but did not challenge the Superior Court's finding that he consented to the search.[213] This Court deemed the argument waived and, because the finding of consent controlled, did not address the appellant's other Fourth Amendment arguments.[214]

The reasoning in *Murphy* applies with equal weight here. Because Gibson does not challenge the Superior Court's application of D.R.E. 807, the argument is waived. And because the application of D.R.E. 807 controls the fundamental question at issue—whether the hearsay statements contained in the receipts were admissible at trial—it is unnecessary for this Court to consider whether the receipts were also admissible under D.R.E. 803(15).

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[211] *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).
[212] *Id.*; Supr. Ct. R. 14(b)(vi)(A)(3).
[213] *Id.* at 1151–52.
[214] *Id.* at 1152–53.

Nevertheless, the receipts were also admissible as documents that affect an interest in property. Under D.R.E. 803(15), a statement "contained in a document that purports to establish or affect an interest in property" is admissible "if the matter stated was relevant to the document's purpose . . . unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document."[215]

This Court has not yet had occasion to construe D.R.E. 803(15). The comments to D.R.E. 803 do not address paragraph (15), either. D.R.E. 803(15) is identical to its federal counterpart, however,[216] and this Court affords "great persuasive weight" to the federal courts' construction of identical federal rules.[217]

The Second Circuit identified three requirements for admission under Federal Rule of Evidence 803(15).[218] First, must be authenticated and trustworthy.[219] Second, it must affect an interest in property.[220] And third, dealings with the property since the document

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[215] D.R.E. 803(15).
[216] *Compare* D.R.E. 803(15), *with* Fed. R. of Evid. 803(15).
[217] *Smith v. State*, 647 A.2d 1083, 1088 (Del. 1994).
[218] *Silverstein v. Chase*, 260 F.3d 142, 149 (2d Cir. 2001).
[219] *Id.*
[220] *Id.*

was made must be consistent with the truth of the statement therein.[221] In construing the phrase "affect an interest in property," the Utah District Court relied on an Eighth Circuit decision construing a similar phrase to conclude that the plain meaning of "affect," as referred to an object, meant "to act upon, operate upon, or concern such object."[222] Upon a review of the rule's text and legislative history, the Utah District Court also concluded that "nothing in the wording of Rule 803(15) requires a dispositive document."[223]

Admission of the receipts satisfied all three requirements for admission. First, the owner of the bicycle shop authenticated the receipts, and the circumstances indicated that the documents were trustworthy. As the Superior Court opined, there is no apparent for someone to give a false name when purchasing and servicing a bicycle.[224] Next, the receipts affect an interest in property because they evidenced a transfer of ownership or possessory interests between the bicycle shop and the customer. Finally, dealings in the

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[221] *Id.*
[222] *United States v. Weinstock*, 863 F. Supp. 1529, 1534–35 (D. Utah 1994) (citing *Gaunt v. Ala. Bound Oil & Gas Co.*, 281 F. 653, 656 (8th Cir. 1922)).
[223] *Id.* at 1532.
[224] A270.

property after the receipts were generated were consistent with those receipts. No one else appeared to exercise ownership of the bicycle before Basilio's murder.

Even if this Court is not satisfied that application of D.R.E. 807 or 803(15) resolve the question presented, the admission of the receipts was harmless error. There was sufficient other evidence to conclude that Gibson owned the bicycle and murdered Basilio while robbing the MetroPCS store. Masteller identified the bicycle recovered nearby as Gibson's and Gibson as the shooter in the surveillance footage.[225] Gibson was arrested with keys to the bike lock in his possession. Basilio was murdered with an uncommon Nyclad-coated bullet, and another such bullet was found in the chamber of the revolver seized when Gibson was arrested.[226] Basilio's Escalade was later found in North Philadelphia, near where Gibson lived.[227] This evidence, separate and apart from the receipts, was sufficient for the jury to convict Gibson of the offenses related to Basilio's murder.

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[225] B114; B117–18; *see also* B189.
[226] B104–05; *see also* B190; B195.
[227] *See* B019–20.

V. Masteller's testimony that the phrase "doing a lick" meant "committing a robbery" was admissible and not hearsay.

Question Presented

Whether Masteller's testimony explaining that the phrase "doing a lick" meant "committing a robbery" was hearsay and had a proper foundation.

Scope of Review

This Court reviews the decision to admit or exclude hearsay for an abuse of discretion.[228] The predicate determination of whether a statement is hearsay involves a legal issue and is subject to *de novo* review.[229]

Merits of Argument

At some point, Masteller noticed that she had not seen Gibson's bicycle, and she asked what happened to it.[230] Gibson said that "it was stolen" while he "was doing a lick."[231] During her direct examination, the prosecutor asked Masteller if she knew what "a lick"

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[228] *Foster*, 961 A.2d at 529–30.
[229] *Mentore v. Metro. Rest. Mgmt. Co.*, 2008 WL 187953, at *2 (Del. Jan. 8, 2008).
[230] B115.
[231] B115.

was.[232] She responded that she did not know at the time but "absolutely do[es]" now.[233] At this point, Gibson objected, arguing that the question lacked a proper foundation and called for hearsay.[234] The Superior Court allowed the State to ask how she learned its meaning, determined that it was not hearsay, and overruled the objection.[235] Masteller explained that she since learned that "lick" means "robbery" because she is "street smart now."[236] On cross-examination, she clarified that she learned the term's meaning from talking to "just friends in general . . . [, p]robably like two or three friends that [she] asked."[237]

Gibson renews his objection on appeal. He argues that Masteller's testimony on the meaning of the term "was based solely on hearsay evidence and did not contain any foundation."[238]

The Superior Court correctly determined that Masteller's testimony on the meaning of "lick" was not hearsay. Masteller was

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[232] B115.
[233] B115.
[234] B116.
[235] B116.
[236] B116.
[237] B121.
[238] Opening Br. 48.

relaying information within her own knowledge, not a particular statement made by a different declarant outside the courtroom. As the Superior Court explained: "If I read a book and learn it, it is not hearsay. If she understands what the term means now, that's not hearsay. That's educating herself."[239]

The meaning of commonplace slang terms—as opposed to coded language used by a particular gang, for example—is within the range of perception and understanding of the average person.[240] This includes the term "lick," which has been crowdsourced in Urban Dictionary and used in public media to mean "robbery."[241] Indeed, this Court has also referred to the meaning of "lick" as "robbery"[242]

Requiring the State to produce the declarant of the meaning of a commonplace slang term would be "an inquest into perpetuity."[243] Whichever friends shared the meaning of "lick" with Masteller also learned the term from speaking to other people. And those other

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[239] B116.
[240] *Freeman v. Maryland*, 318 A.3d 1241, 1252–53 (Md. 2024).
[241] *Id.*
[242] *Ray v. State*, 280 A.3d 627, 631 (Del. 2022).
[243] *See Allison v. Texas*, 666 S.W.3d 750, 761 (Tex. Crim. App. 2023).

people learned it from still other people. And so on and so on. Such is the nature of human-created languages.

Gibson's position cannot be the rule. Trials would transform from searches for the truth to searches for the original sources of basic human understanding.[244] The rules allow room for witnesses to testify about information they learn during the course of their everyday lives.

The Superior Court correctly determined that Masteller's testimony on the meaning of the term "lick" was not hearsay.[245] She testified about the context in which she heard Gibson use the term and how she knew its meaning. The State did not need to invoke any hearsay exception, and no further foundation was necessary.

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[244] Notably, Gibson does not contest that "lick" means "robbery."
[245] *Cf. New Jersey in Interest of D.O.*, 2013 WL 3366781, at *3 (N.J. Super. July 1, 2013) (ruling that an explanation of the slang phrase "ran the train" was not hearsay).

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment of the Superior Court.

Respectfully submitted,

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Dated: December 23, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEITH GIBSON, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	No. 111, 2024 On appeal from the Superior Court of the State of Delaware

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