



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

RONALD SUBER, )  
 )  
 Defendant Below- )  
 Appellant, ) No. 392, 2023  
 )  
 ) ON APPEAL FROM  
 v. ) THE SUPERIOR COURT OF THE  
 ) STATE OF DELAWARE  
 STATE OF DELAWARE, ) ID No. 2108011433A  
 )  
 Plaintiff Below- )  
 Appellee. )

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
DELAWARE IN AND FOR KENT COUNTY

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**OPENING BRIEF**

**COLLINS PRICE & WARNER**

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Dated: March 12, 2025

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## NATURE OF THE PROCEEDINGS

### *Arrest and indictment*

This is a Murder First Degree case. On August 21, 2021, Delaware State Police obtained an arrest warrant for Ronald Suber.<sup>1</sup> In addition to charging Mr. Suber for the shooting and killing Anna Hurst, the police also arrested Mr. Suber for Attempted Murder First Degree for attempting to kill Brian May with a firearm.

Mr. Suber, Hurst, May, and Tori Balfour engaged in thefts of catalytic converters. When involved in one such theft on August 19, 2021, they fled from the police in a car, with Mr. Suber driving.<sup>2</sup> May and Hurst were apprehended and gave statements.<sup>3</sup> Mr. Suber was not caught, but the police charged him with Disregarding a Police Signal, Resisting Arrest, and attempted theft.<sup>4</sup> Mr. Suber quickly became aware that Hurst and May had given statements to the police.<sup>5</sup>

On August 21, 2019, Anna Hurst's body was found by a farmer in a cornfield off Leipsic Road in Dover.<sup>6</sup> Earlier that morning, Brian May showed up at a residence near the farm asking for help. He had been shot in the foot.<sup>7</sup> Later

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<sup>1</sup> A20-26.

<sup>2</sup> A57.

<sup>3</sup> A57-59.

<sup>4</sup> A18. The State later entered a *nolle prosequi* as to this case. A19; D.I. 12.

<sup>5</sup> A25.

<sup>6</sup> A23.

<sup>7</sup> *Id.*

that night, a magistrate approved the arrest warrant charging Mr. Suber with murder, attempted murder, and other charges.

On November 19, 2021, a Court of Common Pleas judge held a preliminary hearing.<sup>8</sup> The Court found that probable cause existed and bound the matter over to Superior Court.<sup>9</sup>

On March 7, 2022, a grand jury approved an indictment charging Mr. Suber with:

1. Murder First Degree (as to Anna Hurst)
2. Attempted Murder First Degree (as to Brian May)
3. Possession of a Firearm During Commission of a Felony (PFDCF)
4. PFDCF
5. Possession of a Firearm by a Person Prohibited (PFBPP)
6. Tampering with a Witness (charged with Tori Balfour)
7. Conspiracy Second Degree (as to Tampering with a Witness)

### *Pretrial matters*

On October 11, 2022, the Superior Court granted the defense's motion to sever the person prohibited charge.<sup>10</sup>

Mr. Suber was dissatisfied with his counsel for various reasons. On November 9, 2022, he filed a motion to disqualify counsel,<sup>11</sup> which trial counsel

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<sup>8</sup> A27-64.

<sup>9</sup> A51.

<sup>10</sup> A89.

<sup>11</sup> A92-96.

asked the judge to docket and consider.<sup>12</sup> The Court held an office conference on November 14, 2022.<sup>13</sup> At the parties' request, the Court agreed to hold a hearing to determine Mr. Suber's intentions regarding representation.<sup>14</sup>

The Court held a hearing on Mr. Suber's motion on November 17, 2022.<sup>15</sup> After hearing Mr. Suber's grievances, the trial judge denied Mr. Suber's motion to disqualify his attorneys.<sup>16</sup> The Court then inquired whether Mr. Suber wished to proceed *pro se*; he declined.<sup>17</sup>

The Court held an office conference on January 6, 2023,<sup>18</sup> to discuss rescheduling the trial. The State could not find Brian May, and the Superior Court approved a material witness warrant.<sup>19</sup> The trial was postponed for three months.<sup>20</sup>

On February 15, 2023, trial counsel requested another hearing to discuss the status of representation.<sup>21</sup>

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<sup>12</sup> A90-91.

<sup>13</sup> A97-103.

<sup>14</sup> A99-101.

<sup>15</sup> A104-118.

<sup>16</sup> A114.

<sup>17</sup> A115-116.

<sup>18</sup> A119-128.

<sup>19</sup> A120-121.

<sup>20</sup> A123-124.

<sup>21</sup> A129-130.



At a hearing on February 23, 2023,<sup>22</sup> Mr. Suber again expressed his dissatisfaction with his attorneys.<sup>23</sup> Again, the Court denied Mr. Suber's request to appoint different counsel.<sup>24</sup> Again, Mr. Suber declined to proceed *pro se*.<sup>25</sup>

On March 2, 2023, the trial judge held a plea rejection colloquy with Mr. Suber.<sup>26</sup> The State offered a plea to Murder Second Degree and PFDCF and agreed to cap its sentencing recommendation at 25 years.<sup>27</sup> The prosecutor explained the minimum and maximum sentences that could be imposed if Mr. Suber proceeded to trial.<sup>28</sup> After a thorough colloquy with the judge, Mr. Suber rejected the plea offer.<sup>29</sup>

***Codefendant Tori Balfour takes a plea and agrees to cooperate.***

On March 15, 2023, codefendant Tori Balfour resolved her case by pleading guilty to Conspiracy Second Degree.<sup>30</sup> In exchange for Balfour's cooperation in the

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<sup>22</sup> A131-153.

<sup>23</sup> A135-137.

<sup>24</sup> A148.

<sup>25</sup> A149. Mr. Suber filed another motion raising similar arguments. A156-159. The Court formally denied that motion by an Order dated February 28, 2023. A160-161.

<sup>26</sup> A162-171.

<sup>27</sup> A164.

<sup>28</sup> A164-165.

<sup>29</sup> A166-170.

<sup>30</sup> A173. Balfour was indicted with Mr. Suber, but only as to Tampering with a Witness and Conspiracy Second Degree. A67.

prosecution of Mr. Suber, the State would recommend no prison time.<sup>31</sup> At the State's request, the Court deferred sentencing until after Mr. Suber's trial.<sup>32</sup>

### ***Trial and sentencing***

Mr. Suber's case proceeded to trial beginning on March 27, 2023 and continuing for seven trial days. Mr. Suber did not testify. The jury found Mr. Suber guilty of all charges.<sup>33</sup> The State entered a *nolle prosequi* on the severed PFBPP charge.<sup>34</sup>

Sentencing took place on October 12, 2023.<sup>35</sup> For Murder First Degree, the Court sentenced Mr. Suber to life imprisonment.<sup>36</sup> For the other charges, the Court sentenced Mr. Suber to an aggregate of 70 years of unsuspended prison time.<sup>37</sup>

### ***Appeal***

One of Mr. Suber's trial attorneys continued to represent Mr. Suber on appeal. He filed a Motion to Withdraw and accompanying Brief Pursuant to Rule 26(c).<sup>38</sup> Mr. Suber provided points for this Court's consideration. The State filed its Response on May 29, 2024.<sup>39</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> A180-181.

<sup>33</sup> A1196-1198; A1219-1223.

<sup>34</sup> A1199.

<sup>35</sup> A1224-1254.

<sup>36</sup> A1249.

<sup>37</sup> A1249-1252. *See also*, Exhibit A.

<sup>38</sup> A1263-1289.

<sup>39</sup> A1290-1308.

On July 29, 2024, this Court issued an Order finding that it could not conclude that Mr. Suber's appeal is wholly without merit.<sup>40</sup> This Court appointed the undersigned attorney as substitute counsel, in particular "to evaluate Mr. Suber's claim that he was denied the opportunity to confront Brian May regarding May's out-of-court statements against him."<sup>41</sup>

This is Mr. Suber's Opening Brief.

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<sup>40</sup> A1309-1311.

<sup>41</sup> A1311.

## SUMMARY OF ARGUMENT

### **I. MR. SUBER'S CONFRONTATION RIGHTS WERE VIOLATED WHEN THE STATE ELICITED INDIRECT HEARSAY FROM THE DETECTIVE ESTABLISHING THAT BRIAN MAY, WHO DID NOT TESTIFY, IDENTIFIED MR. SUBER FROM A PHOTO LINEUP.**

Ronald Suber, codefendant Tori Balfour, Anna Hurst, and Brian May were involved in catalytic converter thefts. In Mr. Suber's trial, the State sought to prove that Mr. Suber murdered Hurst and attempted to murder May because they had given statements to the police about the thefts.

The State could not locate Brian May in time for trial, so the trial proceeded without his testimony. But the prosecutor introduced May's identification of Mr. Suber through the improper indirect hearsay testimony of Detective Ryde. Ryde interviewed Brian May at the hospital the night of the shooting; he testified at trial as follows:

PROSECUTOR: Without telling me anything he said, was [May] shown a photo lineup?

RYDE: Yes.

PROSECUTOR: Without telling me anything he said, did he identify someone in that lineup?

RYDE: Yes.

PROSECUTOR: Were subsequent interviews with Brian May conducted?

RYDE: Yes.

PROSECUTOR: Who conducted those follow-up interviews?

RYDE: I did.

PROSECUTOR: Were all of those interviews recorded?

RYDE: Yes.

PROSECUTOR: As a result of your interview in [sic] the photo lineup, did you get an arrest warrant?

RYDE: Yes.

PROSECUTOR: Who was the arrest warrant for?

RYDE: Ronald Suber, Junior.

PROSECUTOR: What were the charges?

RYDE: Murder First Degree, Attempted Murder First Degree, Possession of a Firearm During Commission of a Felony, two counts of that, and Possession of a Firearm by a Person Prohibited.<sup>42</sup>

The foregoing is a classic (and rather egregious) example of indirect hearsay. Ryde's testimony left no doubt in the juror's minds that the absent Brian May identified Mr. Suber from a photo lineup. For good measure, the State elicited testimony from the detective who compiled the lineup and the detective who showed the lineup to Brian May. This was apparently for no other reason than to remind the jury that May had identified Mr. Suber.

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<sup>42</sup> A374.

This Court should find that Ryde's indirect hearsay establishing May's identification of Mr. Suber violated both the hearsay rule and the Confrontation Clause.

The error was not harmless. May's identification bolstered and corroborated the testimony of Tori Balfour, who testified for the State in exchange for a plea deal and a favorable resolution to her own case. Of course, the jury was instructed to view Balfour's testimony with more care and caution than a typical witness, unless her testimony was corroborated. The confrontation error – May's identification of Mr. Suber – gave the jury the essential corroborative evidence it needed.

For that and other reasons, the error was not harmless beyond a reasonable doubt. This Court should reverse and remand for a new trial.

## STATEMENT OF FACTS

Trial witnesses testified as follows:

*Dean Srygley – Brian May knocked on his door after being shot.*

On the morning of August 21, 2021, Mr. Srygley was sitting with his wife at his home in Dover. A man he had never seen before knocked at the back door.<sup>43</sup>

The man seemed “not normal.”<sup>44</sup> Srygley’s wife called 911. The Srygleys did not let the man into the house on the advice of the 911 operator.<sup>45</sup> Police and EMS arrived. When the medics removed the man’s shoe, Srygley could see blood.<sup>46</sup>

The jury viewed portions of this episode by way of the Srygleys’ security camera footage.<sup>47</sup>

On cross-examination, defense counsel began to elicit statements from the man later identified as Brian May. This drew an objection from the State.<sup>48</sup>

Defense counsel wanted to elicit Brian May’s statement that “the bad man” shot him as an excited utterance.<sup>49</sup> The judge agreed and overruled the objection.<sup>50</sup>

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<sup>43</sup> A295.

<sup>44</sup> A296.

<sup>45</sup> *Id.*

<sup>46</sup> A297.

<sup>47</sup> A300.

<sup>48</sup> A309.

<sup>49</sup> A310.

<sup>50</sup> A312.

Srygley then testified that May told him, “the bad man shot me.”<sup>51</sup> May provided no details about the bad man.<sup>52</sup>

On redirect, Srygley expanded on May’s statements. He testified that May also told him that he fled through a cornfield from a “possible murder scene.”<sup>53</sup> May also told Srygley that “she” had been shot, and May had been told to stand at the back of truck with his hands on it. Then May fled.<sup>54</sup>

***Millard Dixon, who found Anna Hurst in his cornfield.***

Mr. Dixon lives on Dyke Branch Road in Dover.<sup>55</sup> Upon checking his cornfield across the road, he noticed some stalks bent over. Upon approaching, he found a sandal, then a female body.<sup>56</sup> He immediately called 911.<sup>57</sup> The body would later be identified as that of Anna Hurst. Mr. Dixon was at home the night before but heard nothing unusual.<sup>58</sup>

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<sup>51</sup> A313.

<sup>52</sup> *Id.*

<sup>53</sup> A317.

<sup>54</sup> A318.

<sup>55</sup> A325.

<sup>56</sup> A327.

<sup>57</sup> A328.

<sup>58</sup> A331.



***Detective Mark Ryde, Chief Investigating Officer***

Detective Ryde went to the cornfield on the morning Anna Hurst's was found.<sup>59</sup> The body was in a fetal position amidst a large amount of blood.<sup>60</sup> Ryde initially suspected that the victim died by gunshot, due to several nearby casings.<sup>61</sup> But he later learned that Hurst suffered a blunt force trauma.<sup>62</sup>

Next, Ryde visited the Srygley home to interview them and obtain camera footage.<sup>63</sup> Then, along with Sergeant Yeich, he went to the hospital to interview Brian May.<sup>64</sup> May was initially hesitant but then agreed to speak to the detectives.<sup>65</sup> At trial, the following exchange occurred:

PROSECUTOR: Without telling me anything he said, was [May] shown a photo lineup?

RYDE: Yes.

PROSECUTOR: Without telling me anything he said, did he identify someone in that lineup?

RYDE: Yes.

PROSECUTOR: Were subsequent interviews with Brian May conducted?

RYDE: Yes.

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<sup>59</sup> A368.

<sup>60</sup> A371.

<sup>61</sup> *Id.*

<sup>62</sup> A371-372.

<sup>63</sup> A372.

<sup>64</sup> A372-373.

<sup>65</sup> A374.

PROSECUTOR: Who conducted those follow-up interviews?

RYDE: I did.

PROSECUTOR: Were all of those interviews recorded?

RYDE: Yes.

PROSECUTOR: As a result of your interview in [sic] the photo lineup, did you get an arrest warrant?

RYDE: Yes.

PROSECUTOR: Who was the arrest warrant for?

RYDE: Ronald Suber, Junior.

PROSECUTOR: What were the charges?

RYDE: Murder First Degree, Attempted Murder First Degree, Possession of a Firearm During Commission of a Felony, two counts of that, and Possession of a Firearm by a Person Prohibited.<sup>66</sup>

Ryde then testified that throughout his investigation, he received no information implicating Brian May in the homicide.<sup>67</sup> He identified Tori Balfour as a suspect, as she was with Mr. Suber that night in the car.<sup>68</sup>

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<sup>66</sup> A374.

<sup>67</sup> A375.

<sup>68</sup> A376.

Ryde then set about finding Balfour and Mr. Suber. By tracking Balfour's phone, the police were able to locate them in Newark, Delaware.<sup>69</sup> Balfour and Mr. Suber were attending a birthday party there. Police arrested them both.<sup>70</sup>

Ryde interviewed Balfour once while she was in custody.<sup>71</sup> Once Balfour made bail, she voluntarily reported to Troop 2 for another interview. Then she went on a "ride-along" with detectives to relevant locations.<sup>72</sup>

Ryde lost touch with Brian May in September 2021.<sup>73</sup> Ryde made efforts to locate him but could not.<sup>74</sup>

On cross-examination, Ryde again testified that he arrested Mr. Suber based on the interview with Brian May.<sup>75</sup>

***Jeanine Thomas – heard a car and raised voices from her garage near the crime scene.***

Ms. Thomas lives off Dyke Branch Road near the cornfield. Police interviewed her as part of the investigation.<sup>76</sup> The night of the homicide, she was

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<sup>69</sup> A378.

<sup>70</sup> A378-379.

<sup>71</sup> A379.

<sup>72</sup> A380.

<sup>73</sup> A380-381.

<sup>74</sup> A382.

<sup>75</sup> A386-387.

<sup>76</sup> A393.

hanging out in her garage, smoking marijuana and drinking beer.<sup>77</sup> She heard a car approaching fast, then abruptly stopping with tires screeching.<sup>78</sup>

Next she heard, “no, no, no” and “get out, get out, get out,” followed by “pull her by the hair.”<sup>79</sup> She believed this last comment was made by a female voice.<sup>80</sup> Thomas then heard two or three gunshots.<sup>81</sup> She next heard, “my girls need me,” and “her mom has money, would pay.”<sup>82</sup> She then called 911.<sup>83</sup>

***Detective Roy Lowe, crime scene technician***

Detective Lowe processed the crime scene. He noted two separate paths of matted down cornstalks.<sup>84</sup> He collected several spent shell casings near the body.<sup>85</sup> He also found two live rounds.<sup>86</sup> He also swabbed for DNA at multiple locations.<sup>87</sup>

Lowe also processed a Chevrolet Impala, which was later determined to be the car in which Mr. Suber, Balfour, May, and Hurst were riding that night. He swabbed several areas that had apparent blood and collected a bloody towel from

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<sup>77</sup> A394.

<sup>78</sup> A395.

<sup>79</sup> *Id.*

<sup>80</sup> A402.

<sup>81</sup> A395.

<sup>82</sup> A396.

<sup>83</sup> A398.

<sup>84</sup> A415.

<sup>85</sup> A443-447.

<sup>86</sup> A449.

<sup>87</sup> A455-456.

the trunk.<sup>88</sup> Lowe also processed Tori Balfour's Jeep Cherokee,<sup>89</sup> but found nothing relevant to the investigation.<sup>90</sup>

Later in the investigation, Lowe was tasked with retrieving blue gloves from the side of Route 1 near the Leipsic Road overpass.<sup>91</sup>

***Taji Turner – Mr. Suber went to his home the night of the homicide.***

Mr. Turner, from Darby, Pennsylvania, described Mr. Suber as his “cousin from the block.”<sup>92</sup> Sometime in late August, Mr. Suber showed up at Turner's house in the middle of the night. He had a woman with him.<sup>93</sup> Turner recalled that when Mr. Suber arrived, he had a gold handgun.<sup>94</sup>

***Detective Todd Ritchey – photographed Brian May at the hospital.***

Detective Ritchey photographed Brian May at the hospital. Through Ritchey, the State admitted a photograph of May in the hospital and a photograph of his injured foot. The foot had two bullet wounds.<sup>95</sup> He also processed some of the evidence for DNA and fingerprints.

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<sup>88</sup> A467.

<sup>89</sup> A483.

<sup>90</sup> A484.

<sup>91</sup> A486-490.

<sup>92</sup> A525.

<sup>93</sup> A525-526.

<sup>94</sup> A527.

<sup>95</sup> A531.

*Tori Balfour – codefendant and cooperating witness*

Ms. Balfour met Mr. Suber through a mutual friend. In August and September 2021, they saw each other daily. She identified him in the courtroom.<sup>96</sup> She knew May and Hurst less well, having only met them three or four times.<sup>97</sup> With Mr. Suber, May, and Hurst, Balfour was engaged in the theft of catalytic converters from cars.<sup>98</sup> Also participating were May and Hurst, who Balfour referred to as clients.<sup>99</sup>

Late one night in August 2021, Balfour was with the group while May was cutting a catalytic converter out of a car.<sup>100</sup> The car's owner emerged from his house. Everyone got back in their SUV and left. They passed a police officer, who followed.<sup>101</sup> May and Hurst got out of the SUV and fled, with the police in pursuit. Mr. Suber and Balfour made it to an alleyway and parked.<sup>102</sup>

According to Balfour, Mr. Suber got wind of the fact that May and Hurst were arrested for the attempted theft and flight from the police and that Hurst had given a statement.<sup>103</sup>

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<sup>96</sup> A571.

<sup>97</sup> A579.

<sup>98</sup> A571-572.

<sup>99</sup> A572.

<sup>100</sup> A573.

<sup>101</sup> A574.

<sup>102</sup> A575.

<sup>103</sup> A580.

In August 2021, Balfour drove a white Jeep Cherokee. But after the night of the attempted theft, she traded vehicles with her cousin, Michael Pettyjohn.<sup>104</sup> She obtained his black Chevrolet Impala.<sup>105</sup> The swap occurred because Mr. Suber told her he needed a car with tinted windows.<sup>106</sup>

Meanwhile, May and Hurst were trying to contact Mr. Suber to set up a meeting. Mr. Suber agreed to meet.<sup>107</sup> Before the meeting, which was to be at the Safeway, Mr. Suber directed Balfour to drive down Little Creek Road.<sup>108</sup> Mr. Suber exited the car, deposited something from his pocket near a telephone pole, then returned to the car.<sup>109</sup>

The meeting location was changed to the Royal Farms. May and Hurst got in the back seat.<sup>110</sup> At Mr. Suber's direction, Balfour drove back to Little Creek Road, where Mr. Suber retrieved his item.<sup>111</sup> They continued to drive. Balfour testified that Mr. Suber expressed unhappiness with May and Hurst, because he had heard they had spoken to the police.<sup>112</sup>

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<sup>104</sup> A588.

<sup>105</sup> *Id.*

<sup>106</sup> A590.

<sup>107</sup> A591-592.

<sup>108</sup> A592.

<sup>109</sup> A593.

<sup>110</sup> A594-595.

<sup>111</sup> A596.

<sup>112</sup> A598.

The drive continued until Mr. Suber said to stop. May and Hurst said they needed to go to the bathroom anyway, so they got out too.<sup>113</sup> Balfour saw that Mr. Suber had a blue glove on and a gold-colored gun in that hand.<sup>114</sup> Through the rearview mirror, Balfour saw Mr. Suber pointing a gun at May and Hurst.<sup>115</sup> After the shot, Hurst dropped to the ground; May began to run. Mr. Suber continued shooting, this time at May.<sup>116</sup> He then went back towards Hurst, but Balfour did not see what he did.<sup>117</sup> Mr. Suber then returned to the car and asked Balfour for a sharp object. She could not find one, so Mr. Suber opened the trunk.<sup>118</sup> Mr. Suber walked back to the cornfield. Balfour closed the trunk and got back in the car.<sup>119</sup>

Eventually, Mr. Suber got back in the car and directed Balfour to drive to his cousin's house on Little Creek Road.<sup>120</sup> While in the car, Balfour heard Mr. Suber tell someone on the phone that he had killed a white girl. On another phone call, he told someone, "if you see the white boy, take him out."<sup>121</sup> Once at his cousin's

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<sup>113</sup> A608.

<sup>114</sup> A610.

<sup>115</sup> A611.

<sup>116</sup> A612.

<sup>117</sup> A614.

<sup>118</sup> A615.

<sup>119</sup> A616.

<sup>120</sup> A617.

<sup>121</sup> A618.



house, Mr. Suber changed his clothes and got back in the car. They then traveled to Philadelphia.<sup>122</sup> He threw the clothes and the blue gloves out the window.<sup>123</sup>

They arrived at Mr. Suber's cousin's house in the early morning hours. They remained there for several days and "stayed low."<sup>124</sup> Mr. Suber placed the handgun on a counter in the living room.<sup>125</sup>

Balfour returned to Delaware and swapped cars again with her cousin.<sup>126</sup> Balfour and Mr. Suber again returned to Delaware to attend Mr. Suber's son's birthday party. They were stopped and arrested by the police.<sup>127</sup> Balfour was arrested for Tampering with a Witness and Conspiracy Second Degree.<sup>128</sup> She provided an account of the incident to police while in custody.<sup>129</sup>

The State introduced Balfour's plea agreement and TIS form.<sup>130</sup> Balfour confirmed her understanding that if she cooperated in the prosecution of Mr. Suber, the State would recommend no prison time.<sup>131</sup> Her charges related to the catalytic converter thefts were also dropped.<sup>132</sup>

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<sup>122</sup> *Id.*

<sup>123</sup> A619.

<sup>124</sup> *Id.*

<sup>125</sup> A620.

<sup>126</sup> A620.

<sup>127</sup> A622.

<sup>128</sup> A625.

<sup>129</sup> A623.

<sup>130</sup> A631-632; *See*, A183-184.

<sup>131</sup> A632.

<sup>132</sup> A642.

On cross-examination, Balfour admitted that she engaged the child locks on the car.<sup>133</sup> She denied doing so because May and Hurst were about to get in the car.<sup>134</sup> Balfour admitted that she knew May had been abusive to Hurst. After seeing the behavior, she provided her phone number to Hurst.<sup>135</sup> Balfour witnessed May banging on the door of a motel room where Anna was staying.<sup>136</sup>

***Michael Pettyjohn – Balfour’s cousin and lender of car.***

Mr. Pettyjohn testified that he was Tori Balfour’s cousin.<sup>137</sup> In August 2021, he agreed to swap cars with Balfour. For a week or two, Pettyjohn had Balfour’s Jeep while she had his Impala.<sup>138</sup> Balfour then called him to arrange re-exchanging the cars.<sup>139</sup>

***Ashley Haines, fingerprint examiner***

Ms. Haines compared a latent fingerprint to four individuals, none of whom were a match.<sup>140</sup>

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<sup>133</sup> A644.

<sup>134</sup> A645.

<sup>135</sup> A662.

<sup>136</sup> A665.

<sup>137</sup> A688.

<sup>138</sup> A689.

<sup>139</sup> A692.

<sup>140</sup> A707.

***Dr. Jennifer Swartz, pathologist***

Dr. Swartz conducted an autopsy on Anna Hurst.<sup>141</sup> Dr. Swartz testified that Hurst had sustained a gunshot wound to her neck.<sup>142</sup> She was also shot in the right hand.<sup>143</sup> Hurst also had blunt force trauma injuries to her head,<sup>144</sup> which was hard enough to fracture her skull.<sup>145</sup> The combination of the gunshot wound to the head and the blunt force trauma caused Hurst's death.<sup>146</sup>

***Jacob Ferger, DELDOT IT manager***

Mr. Ferger maintains the computers and cameras for the toll plazas.<sup>147</sup> Through Ferger, the State marked for identification a video from the Dover and Biddles toll plazas.<sup>148</sup> He testified that the Dover toll plaza was just south of Dover Speedway and the Biddles plaza was at the southern end of the Roth Bridge.<sup>149</sup>

***Nicole Jackson – friend of Mr. Suber***

Ms. Jackson has a child with Mr. Suber.<sup>150</sup> She testified that she received “paperwork” in her in August 2021 that was hanging out of her mailbox.<sup>151</sup>

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<sup>141</sup> A722.

<sup>142</sup> A725.

<sup>143</sup> A731.

<sup>144</sup> A732.

<sup>145</sup> A733.

<sup>146</sup> A737-738.

<sup>147</sup> A756.

<sup>148</sup> A759.

<sup>149</sup> A760-761.

<sup>150</sup> A764.

<sup>151</sup> A765.

Jackson saw that the paperwork included the term “catalytic converter.”<sup>152</sup> The document also mentioned Tori Balfour.<sup>153</sup> Knowing that Mr. Suber knew Balfour, Jackson called him about the document. Jackson wondered why the document was in her mailbox, as Mr. Suber did not live with her.<sup>154</sup>

***Bethany Netta, DNA expert***

The police provided Ms. Netta with a number of evidentiary DNA samples, along with reference samples for Anna Hurst, Michael Pettyjohn, Tori Balfour, and Mr. Suber.<sup>155</sup> DNA on the towel from the car was a match for Anna Hurst.<sup>156</sup> DNA from the plastic molding from the trunk also matched Hurst.<sup>157</sup> Swabs from the interior driver’s side door contained Mr. Suber’s DNA.<sup>158</sup> Nothing of significance could be determined from the other evidentiary samples.

***James Storey, firearm and toolmark examiner***

Mr. Storey works at the Forensic Firearms Unit of the Delaware State Police.<sup>159</sup> He examined the three shell casings and two live rounds recovered from

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<sup>152</sup> A782.

<sup>153</sup> A784.

<sup>154</sup> *Id.*

<sup>155</sup> A799.

<sup>156</sup> A806.

<sup>157</sup> A806.

<sup>158</sup> A808.

<sup>159</sup> A836.

the cornfield.<sup>160</sup> They were all .45 caliber ammunition.<sup>161</sup> Storey testified that the three shell casings were all fired from the same firearm.<sup>162</sup>

***Detective Daniel Grassi – compiled the photo lineup***

Detective Grassi testified that he compiled a six-person photographic lineup and gave it to another officer.<sup>163</sup> The lineup was eventually used in the Brian May interview.<sup>164</sup>

***Detective Stephen Yeich – administered the photo lineup and took Tori Balfour on a ride-along.***

Detective Yeich was involved in the investigation throughout. He accompanied Detective Ryde to the hospital for the interview of Brian May.<sup>165</sup> At a certain point, Ryde left the room and Yeich administered the photo lineup to May.<sup>166</sup>

Yeich and another detective took Tori Balfour on a ride-along after her police station interview with Detective Ryde.<sup>167</sup> After leaving Royal Farms,

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<sup>160</sup> A840.

<sup>161</sup> *Id.*

<sup>162</sup> A842.

<sup>163</sup> A853.

<sup>164</sup> A864.

<sup>165</sup> A863.

<sup>166</sup> A864.

<sup>167</sup> A865.

Balfour directed them down Little Creek Road. They stopped at a utility pole.<sup>168</sup>

They stopped again at Mr. Suber's cousin's house.<sup>169</sup>

***Detective Mark Ryde presents toll plaza footage.***

Detective Ryde testified about security camera footage from the Royal Farms near the Target in Dover on the day of the homicide.<sup>170</sup> The footage depicted May and Hurst getting into the backseat of the Impala.<sup>171</sup> Hurst was wearing the same clothing as when she was found in the cornfield.<sup>172</sup>

Ryde also testified about the toll plaza footage which had previously been marked for identification.<sup>173</sup> Ryde identified a car going through the Dover toll plaza that he believed was the Impala.<sup>174</sup> The car went through the Dover plaza at 1:51 AM on August 21, 2021.<sup>175</sup> Ryde repeated the same process at the northbound Biddles plaza and located the car on video. The car went through the tollbooth at 2:25 AM.<sup>176</sup>

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<sup>168</sup> A868.

<sup>169</sup> A869.

<sup>170</sup> A883.

<sup>171</sup> A884.

<sup>172</sup> A891.

<sup>173</sup> A893.

<sup>174</sup> A895.

<sup>175</sup> A897.

<sup>176</sup> *Id.*

***Officer Anthony Slaughter, Dover Police – investigated catalytic converter thefts.***

Officer Slaughter was among the officers dispatched to a suspected catalytic converter theft in Dover.<sup>177</sup> By the time he arrived, another officer had already obtained a description of the SUV in which the suspects fled.<sup>178</sup> While pursuing the SUV, Slaughter saw that it slowed down briefly. A white male and a white female exited the SUV and fled on foot.<sup>179</sup> Slaughter gave chase and was able to take the female into custody.<sup>180</sup> She was identified as Anna Hurst.<sup>181</sup>

Hurst confessed that she and others were involved in the attempted theft of a catalytic converter.<sup>182</sup> Slaughter provided her with a copy of her arrest warrant, and she was released from custody.<sup>183</sup>

The State then rested.<sup>184</sup>

***Defense witness Kelly Patrick Cobb – domestic incident between May and Hurst.***

Ms. Cobb was a friend of Anna Hurst. She testified that about two weeks before the homicide, Hurst told her that Brian May had pushed her out a window.

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<sup>177</sup> A959.

<sup>178</sup> A960.

<sup>179</sup> A962.

<sup>180</sup> *Id*

<sup>181</sup> A963.

<sup>182</sup> *Id.*

<sup>183</sup> A964.

<sup>184</sup> *Id.*

Hurst had a gash in her forehead.<sup>185</sup> Brian May was following her.<sup>186</sup> Cobb threw her cellphone at him.<sup>187</sup>

***Defense witness Detective Mark Ryde***

Detective Ryde testified that he attended training on the Reid Technique, a commonly used interrogation method.<sup>188</sup> One facet of the Reid Technique is positive confrontation, which is informing the subject that the police already have evidence of what happened.<sup>189</sup> Ryde used this method with Balfour; for example, he explained that he knew only one gun was used in the homicide.<sup>190</sup>

Ryde admitted he told Balfour that Mr. Suber was done and could not help himself, but she could.<sup>191</sup> Ryde admitted he told Balfour that he had personally concluded that she was not the shooter, and that she was in the wrong place at the wrong time.<sup>192</sup>

Ryde testified that he asked Balfour if Mr. Suber was questioning May and Hurst to try to find out if they implicated him in the catalytic converter theft; Balfour confirmed that was the case.<sup>193</sup>

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<sup>185</sup> A990.

<sup>186</sup> A991.

<sup>187</sup> A993.

<sup>188</sup> A1019-1020.

<sup>189</sup> A1021-1022.

<sup>190</sup> A1023-1024.

<sup>191</sup> A1024.

<sup>192</sup> A1025-1026.

<sup>193</sup> A1027-1028.



***Mr. Suber elects not to testify.***

Defense counsel informed the judge that Mr. Suber had decided not to testify.<sup>194</sup> The Court conducted a thorough colloquy with Mr. Suber and concluded that his decision was made knowingly and voluntarily.<sup>195</sup>

***Officer Daniel Godwin, Dover Police Department***

On August 16, 2021, Officer Godwin went to the Super Lodge in Dover to investigate a domestic complaint made by Anna Hurst against Brian May.<sup>196</sup> Godwin arrested May for Offensive Touching, Resisting Arrest, and other charges.<sup>197</sup>

The Court confirmed with Mr. Suber that Godwin's testimony did not change Mr. Suber's decision not to testify.<sup>198</sup> The defense rested.<sup>199</sup>

***Verdict – guilty on all counts***

After instructing the jury, due to the lateness of the hour, the judge released them for the day and did not swear the bailiff.<sup>200</sup> The jury began deliberations the next morning, April 4, 2023. That morning, the jury sent out a note requesting further evidence; the Court instructed them to rely on the evidence admitted at

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<sup>194</sup> A1044.

<sup>195</sup> A1045-1046.

<sup>196</sup> A1048.

<sup>197</sup> A1049.

<sup>198</sup> A1053.

<sup>199</sup> *Id.*

<sup>200</sup> A1139.

trial.<sup>201</sup> That same afternoon, the jury announced its verdicts of guilty on all charges.<sup>202</sup>

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<sup>201</sup> A1194.

<sup>202</sup> A1197.

## ARGUMENT

### **I. MR. SUBER’S CONFRONTATION RIGHTS WERE VIOLATED WHEN THE STATE ELICITED INDIRECT HEARSAY FROM THE DETECTIVE ESTABLISHING THAT BRIAN MAY, WHO DID NOT TESTIFY, IDENTIFIED MR. SUBER FROM A PHOTO LINEUP.**

#### A. Question Presented

Whether when the State elicited testimony from Detective Ryde that Brian May, who did not testify, viewed a photo lineup and then Ryde swore an arrest warrant was inadmissible indirect hearsay and a violation of Mr. Suber’s right to confrontation. This issue was not preserved in the Superior Court as defense counsel did not object. As such, appellate counsel respectfully seeks review under Superior Court Rule 8. When the interests of justice require, this Court may consider issues not presented to the trial court. This Court’s Order appointing substitute appellate counsel directs counsel to evaluate this issue.

#### B. Scope of Review

Generally, this Court reviews constitutional questions *de novo*.<sup>203</sup> Because this issue was not raised below, however, this Court reviews for plain error.<sup>204</sup> This Court has held, “under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and

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<sup>203</sup> *Flonnory v. State*, 893 A.2d 507, 535 (Del. 2006).

<sup>204</sup> *McCrary v. State*, 290 A.3d 442 (Del. 2023).

integrity of the trial process.”<sup>205</sup> Moreover, “[T]he doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”<sup>206</sup>

### **C. Merits of Argument**

#### ***Applicable legal precepts – indirect hearsay and Confrontation Clause***

In *Wheeler v. State*,<sup>207</sup> an attempted murder case, this Court dealt with a similar scenario, coincidentally also involving Detective Ryde’s testimony. In *Wheeler*, the victim testified that Wheeler shot him.<sup>208</sup> He also testified that another witness told her sister, “[Wheeler] just shot Herbie.” This statement was admitted as an excited utterance.<sup>209</sup>

Detective Ryde then testified about three witnesses he interviewed after the shooting, none of whom testified at trial. Two were in the house when the shooting occurred, and one was the landlord, who was not present. For each of the three people, the prosecutor asked Ryde if, after interviewing the witness, if he had any reason to believe that a suspect other than the defendant was involved in the

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<sup>205</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

<sup>206</sup> *Id.*

<sup>207</sup> 36 A.3d 310 (Del. 2012).

<sup>208</sup> *Id.* at 313-314.

<sup>209</sup> *Id.* at 314.

shooting. Ryde responded “no” each time.<sup>210</sup> None of the three individuals testified at Wheeler’s trial.

This Court found Ryde’s testimony to be a “classic example of indirect hearsay.”<sup>211</sup> This Court found that the jury could reasonably infer only one thing from his testimony: that the three unavailable witnesses implicated Wheeler. As such, this Court found that the hearsay rule was violated.<sup>212</sup>

This Court next turned to the Confrontation Clause issue. Turning to *Crawford v. Washington*<sup>213</sup> and its progeny, this Court explained that the threshold question is whether the challenged statement is hearsay, that is to say, an out-of-court statement admitted for its truth. This Court noted that the Confrontation Clause prohibits introduction of testimonial out-of-court statements unless the defense had a prior opportunity for cross-examination.<sup>214</sup> A statement is testimonial “if it is provided for the purpose of fact gathering for a future criminal prosecution.”<sup>215</sup> The United States Supreme Court has held that “interrogations by law enforcement officers fall squarely within this class.”<sup>216</sup>

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<sup>210</sup> *Id.* at 315.

<sup>211</sup> *Id.* at 317.

<sup>212</sup> *Id.*

<sup>213</sup> 541 U.S. 36 (2004).

<sup>214</sup> *Id.* at 53-54.

<sup>215</sup> *Dixon v. State*, 996 A.2d 1271, 1277-1278 (Del. 2012), *citing*, *Davis v. Washington*, 547 U.S. 813, 822-824 (2006).

<sup>216</sup> *Crawford* at 53.

This Court concluded that, although the jury was not told exactly what each of the three witnesses said, Ryde’s testimony conveyed the substance: that each witness identified Wheeler as the shooter. As such, this Court found a confrontation clause violation.<sup>217</sup>

This Court, however, affirmed Wheeler’s convictions because the three witnesses implied statements were cumulative. The victim himself identified Wheeler in court, and the excited utterance that Wheeler shot Herbie was by one of the three witnesses that was the subject of the Confrontation Clause issue. As such, this Court harmless error beyond a reasonable doubt.<sup>218</sup>

In both the pre- and post-*Crawford* eras, indirect hearsay statements implying an identification by an unavailable witness have fallen afoul of the Confrontation Clause. In *Mitchell v. Hoke*,<sup>219</sup> the prosecutor elicited testimony from the detective that a witness, Elliot Primus, was shown a lineup that included the defendant’s photo. The prosecutor next asked, “and pursuant to that, did you make an arrest, officer?” The detective confirmed that he arrested the defendant.<sup>220</sup>

As to this testimony, the District Court held, “the jury could draw only one reasonable inference from the detective’s testimony: that Primus selected Mitchell.

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<sup>217</sup> *Id.* at 320.

<sup>218</sup> *Id.* at 321.

<sup>219</sup> 930 F.2d 1 (2d Cir. 1991).

<sup>220</sup> *Id.* at 2.

The detective in effect repeated the substance of Primus' out-of-court statement."<sup>221</sup> The appellate court affirmed the District Court's granting of habeas relief.<sup>222</sup>

In *United States v. Meises*,<sup>223</sup> a drug prosecution, a DEA agent testified about an interview he had with one of three suspected coconspirators, Rubis Dario. The agent selected Rubis because "he had the intention of cooperating with us."<sup>224</sup> The agent did not specifically state that the Dario identified anyone. But then the prosecutor asked, "after this interview, did the targets of your investigation change?" After the agent replied affirmatively, the prosecutor followed up by asking, "okay, after this interview, what did you decide to do with [other defendant]?" The agent confirmed that he processed the other two defendants and took them to a federal detention facility.<sup>225</sup>

The *Meises* Court found that his right to confrontation had been violated, holding, "if what the jury hears is, in substance, an untested, out-of-court accusation against the defendant, particularly if the inculpatory statement is made

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<sup>221</sup> *Mitchell v. Hoke*, 745 F.Supp. 874, 876 (E.D.N.Y. 1990).

<sup>222</sup> *Mitchell*, 930 F.2d at 3.

<sup>223</sup> 645 F.3d 5 (1<sup>st</sup> Cir. 2011).

<sup>224</sup> *Id.* at 19.

<sup>225</sup> *Id.*

to law enforcement authorities, the defendant's Sixth Amendment right to confront the declarant is triggered."<sup>226</sup>

The Court further noted that "any other conclusion would permit the government to evade the limitations of the Sixth Amendment and the Rules of Evidence by weaving an unavailable declarant's statements into another witness's testimony by implication."<sup>227</sup> The Court vacated Meises' convictions and remanded.<sup>228</sup>

***Detective Ryde's testimony left no doubt that May identified Mr. Suber from a photo lineup, in violation of the hearsay rule and Mr. Suber's constitutional right to confrontation.***

Detective Ryde's testimony about his interview with Brian May was classic indirect hearsay. The prosecutor crafted her questions to make clear that May had viewed a photo lineup, and that May made an identification. Then, the prosecutor elicited testimony that after interviewing May at the hospital, Ryde drafted an arrest warrant for Mr. Suber. For good measure, Detective Ryde testified that he interviewed May twice more, the obvious implication being that May did not change his mind about identifying Mr. Suber as the shooter.

The State then reminded the jury about the photo lineup by gratuitously presenting two other witnesses to testify about the lineup. Detective Grassi testified

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<sup>226</sup> *Id.* at 21.

<sup>227</sup> *Id.* at 22.

<sup>228</sup> *Id.* at 26.



that he created the lineup; Detective Yeich testified that Ryde left the hospital room and Yeich administered the photo lineup to Brian May.

There is no doubt that the statement of Brian May identifying Mr. Suber, presented through the testimony of Detective Ryde, was inadmissible indirect hearsay. It also violated the Confrontation Clause. The violations here are more pronounced than the ones this Court found in *Wheeler*. In *Wheeler*, Detective Ryde testified that he interviewed three witnesses, and the interviews did not change his mind about whom to arrest. In Mr. Suber's case, the inadmissible testimony involved an actual identification of Mr. Suber from a photo lineup – and not just by anyone. It was made by Brian May, who was a crucial eyewitness and the alleged victim of the attempted murder.

Applying the law to these facts, this Court should have little difficulty in holding that Mr. Suber's trial featured violations of the hearsay rule and the Confrontation Clause. And the errors were not harmless.

***Applicable legal precepts – harmless error analysis***

Even errors of a constitutional dimension can be held harmless by a reviewing court. In *Chapman v. California*,<sup>229</sup> the United States Supreme Court announced that constitutional error cannot be held harmless unless the reviewing court must “find beyond a reasonable doubt that the error complained of did not

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<sup>229</sup> 386 U.S. 18 (1967).

contribute to the verdict obtained.”<sup>230</sup> Whether an error is harmless depends on a number of factors, such as the importance of the witness’s testimony, whether that testimony was cumulative evidence, the presence or absence of corroborative or contradictory evidence, and the overall strength of the prosecution’s case.<sup>231</sup> In sum, the reviewing court must be sure beyond a reasonable doubt that the guilty verdicts at trial were not attributable to the constitutional error.<sup>232</sup>

In *Wheeler*, this Court cited to *Holmes v. State* for the principle that a constitutional confrontation error occurs where the “out-of-court statements were not merely cumulative evidence...[but] likely a principal factor in the conviction.”<sup>233</sup> But this “principal factor” standard does not describe the totality of harmless error analysis. Rather, it provides an example of a scenario where harmless error cannot be found.

It is certainly true that when a confrontation error is *not* cumulative and *is* a principal factor in the conviction, it cannot be harmless error. The issue in *Holmes* was a hearsay newspaper article introduced into evidence. The article was heavily

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<sup>230</sup> *Id.* at 24.

<sup>231</sup> *Delaware v. VanArsdall*, 475 U.S. 673, 684 (1986).

<sup>232</sup> *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993).

<sup>233</sup> *Wheeler* at 321, *citing*, *Holmes v. State*, 2010 WL 5043910 at \*5 (Del. Dec. 9, 2010).

cumulative because every aspect of it had been testified about at length, including the defendant's testimony that he knew it by heart.<sup>234</sup>

The *Holmes* Court took "principal factor" quote from *Sanabria v. State*,<sup>235</sup> a case in which the confrontation error *was* a principal factor in the conviction. In *Sanabria*, a burglary case, the out-of-court statement by a dispatcher that a motion detector had been tripped. Over an objection, the officer continued to testify that the dispatcher told him that the alarm company informed the dispatcher that the motion detector in the foyer was activated.<sup>236</sup>

There was little in the way of other evidence that Sanabria had entered the home, forensic or otherwise. In fact, the only evidence supporting the conclusion that Sanabria had entered the home was the homeowner's testimony that it appeared some items on his desk had been moved.<sup>237</sup>

This Court found that the error was not harmless, because "the dispatcher's out-of-court statements were not merely cumulative evidence. They were likely a principal factor in Sanabria's conviction."<sup>238</sup>

As such, certainly when the error is not cumulative, and is a principal factor in the conviction, a reviewing court will not find harmless error. But there is more

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<sup>234</sup> *Holmes* at \*5.

<sup>235</sup> 974 A.2d 107 (Del. 2009).

<sup>236</sup> *Id.* at 111.

<sup>237</sup> *Id.* at 115.

<sup>238</sup> *Id.* at 120.

to harmless error analysis than that. The long established harmless beyond a reasonable doubt, when considering all the factors set forth in *VanArsdall* is the proper standard.

***The Confrontation Clause error in Mr. Suber's case was not harmless.***

Brian May's identification of Mr. Suber as the shooter was a major piece of evidence in the trial. May was, after all, present at the scene and was himself shot. His improperly admitted identification gave the jury a key piece of identification evidence.

More importantly, May's identification bolstered the identification testimony of the cooperating codefendant Tori Balfour. After all, the jury was instructed to view Balfour's evidence with "more care and caution" than the testimony of a witness who was not an accomplice.<sup>239</sup> The jury was further instructed that the care and caution is even more pronounced when there is nothing in the evidence to corroborate the accomplice's testimony that the defendant committed the crime. The jury was instructed that without corroboration, the jury should not convict unless satisfied that the accomplice's testimony was true.<sup>240</sup>

May's identification provided the jury with the crucial corroborative it needed to believe Tori Balfour, despite her being an accomplice testifying in

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<sup>239</sup> A1129.

<sup>240</sup> A1129-1130.

exchange for no jail time. Without May's identification of Mr. Suber, the jury would have viewed Balfour's testimony with the requisite care and caution.

As noted, the jury heard two additional witnesses who took the stand for no real reason other than to remind the jury that the lineup had been shown to Brian May. One officer created the lineup, the other showed it to May while Ryde stepped out of the room. So, May's identification was more a one-off brief statement in the trial.

Moreover, consideration of May's identification must be juxtaposed with other evidence about Mr. Suber presented at trial. First, May while disoriented on the Srygley's back porch, stated that "the bad man" shot me. Although initially elicited by the defense, May's statement about the bad man was highly prejudicial when placed in context of May's later identification of Mr. Suber from a photo lineup. The jury likely concluded that Mr. Suber was indeed the bad man who killed Anna Hurst.

Finally, the jury improperly learned of Mr. Suber's status as a person prohibited from possessing a firearm. When Ryde testified that after the interview with May in which May was shown a photo lineup, he wrote an arrest warrant for Mr. Suber, the prosecutor asked him to list the charges. Among the charges Ryde

listed was PFBPP.<sup>241</sup> Although Ryde blurting out PFBPP among the charges did not appear intentional, the jury still heard it as affirmative evidence.

Ryde's testimony about Mr. Suber's prohibited status immediately followed his testimony in which he, through indirect hearsay, informed the jury that Brian May had identified Mr. Suber as the perpetrator; that fact must be considered in the harmless error analysis. The purpose of severing the PFBPP charge was to avoid any improper inference that Mr. Suber was prohibited due to some past criminal conduct – a fact that would make him more likely to be the perpetrator of the crimes for which he was on trial. That was all undone by the detective's testimony that Mr. Suber was charged with PFBPP. Coming immediately after Ryde's indirect hearsay that May identified Mr. Suber, Ryde's testimony that Mr. Suber was charged with PFBPP weighs against a finding of harmless error.

Given all these factors, this Court should conclude that the constitutional confrontation error in Mr. Suber's case was not harmless; this Court should reverse and remand for a new trial.

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<sup>241</sup> A379.

## **CONCLUSION**

Based on the foregoing, this Court should find that Mr. Suber's trial contained violations of the hearsay rule and the Confrontation Clause. This Court should also find that the error was not harmless. This Court should reverse and remand for a new trial.

### **COLLINS PRICE & WARNER**

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