



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

JHALIR HENRY, )  
 )  
 Defendant Below- )  
 Appellant, ) No. 519, 2024  
 )  
 ) ON APPEAL FROM  
 v. ) THE SUPERIOR COURT OF THE  
 ) STATE OF DELAWARE  
 STATE OF DELAWARE, ) ID No. 2304008809A/B  
 )  
 Plaintiff Below- )  
 Appellee. )

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

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**OPENING BRIEF**

**COLLINS PRICE WARNER  
WOLOSHIN**

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Dated: May 19, 2025

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## NATURE OF THE PROCEEDINGS

### *Arrest, indictment, and pretrial matters*

Corey Mumford died by gunfire in Laurel, Delaware on April 14, 2023. Three days later, state police arrested Jhalir Henry for the murder.<sup>1</sup> Police also arrested two codefendants: Donregus Holland and Shyheem Latham-Purnell. On May 22, 2023, the Court of Common Pleas held a preliminary hearing.<sup>2</sup> At the conclusion of the hearing, the judge found that probable cause existed and bound Mr. Henry's case over to Superior Court.<sup>3</sup>

On June 26, 2023, a Sussex County grand jury approved an indictment charging the three codefendants with the following charges:

1. Murder First Degree – intentionally killed Corey Mumford
2. Possession of a Firearm During Commission of a Felony (PFDCF)
3. Possession of a Firearm by a Person Prohibited (PFBPP) (Henry)
4. PFBPP (Holland)
5. PFBPP (Latham-Purnell)
6. Conspiracy First Degree<sup>4</sup>

The indictment was later amended to correct the victim's name by removing the "Jr." and to correct the degree of felony as to Latham-Purnell's PFBPP charge.<sup>5</sup>

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

<sup>2</sup> A30-70.

<sup>3</sup> A70-71.

<sup>4</sup> A73-76.

<sup>5</sup> A78-81.

On May 23, 2024, the Court granted a motion to sever the person prohibited charge, creating a “B” case.<sup>6</sup>

On May 30, 2024, the Court held a final case review and office conference.<sup>7</sup> The State offered Mr. Henry a plea to Manslaughter and PFDCF. The minimum sentence was five years, and the State agreed to cap its sentencing recommendation at 20 years.<sup>8</sup> After a thorough colloquy with the judge, Mr. Henry rejected the plea offer.<sup>9</sup> Latham-Purnell accepted a plea.

### ***Trial***

On June 10, 2024, the trial began with the *voir dire* of the jury panel. By the end of the day, there were not enough prospective jurors, so a second panel was to be brought in the next day.<sup>10</sup> Shortly after the second panel was brought in on June 11, 2024, the attorneys met with the judge to inform him that Mr. Henry and Holland wanted a bench trial.<sup>11</sup> The State consented.<sup>12</sup>

Mr. Henry signed a waiver of his right to a jury trial.<sup>13</sup> The judge conducted a thorough colloquy with Mr. Henry and accepted his waiver.<sup>14</sup>

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<sup>6</sup> A6; D.I. 48.; A95-99.

<sup>7</sup> A100-126.

<sup>8</sup> A103-104.

<sup>9</sup> A104-109.

<sup>10</sup> A7; D.I. 59.

<sup>11</sup> A130.

<sup>12</sup> A133.

<sup>13</sup> A186.

<sup>14</sup> A138-144.

Trial proceeded over the next six days. At the conclusion of the State's case, defense counsel sought guidance from the Court regarding the timing of a motion for judgment of acquittal; Supreme Court Criminal Rule 29(c) only addresses the timing of such motions for jury trials. The Court indicated that it would fix the time for the filing of the motion at the time of verdict.<sup>15</sup>

After a colloquy, Mr. Henry elected not to testify.<sup>16</sup> Holland did not testify either.<sup>17</sup> Neither defendant presented evidence.

On June 24, 2024, the Court gave its verdicts. The Court found Mr. Henry guilty of all charges.<sup>18</sup> The Court found Holland not guilty of all charges.<sup>19</sup>

***The Court denies Mr. Henry's motion for judgment of acquittal.***

The day after trial, the undersigned attorney filed a Motion for Enlargement of Time to File a Motion for Judgment of Acquittal.<sup>20</sup> The judge granted the motion,<sup>21</sup> but directed counsel to file a motion within the prescribed time and request leave to amend. As such, that same day, counsel filed a Motion for Judgment of Acquittal with proposed briefing schedule.<sup>22</sup> On July 10, 2024,

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<sup>15</sup> A917-918.

<sup>16</sup> A919-920.

<sup>17</sup> A920-921.

<sup>18</sup> A1034.

<sup>19</sup> A1035.

<sup>20</sup> A1044-1049.

<sup>21</sup> A1043.

<sup>22</sup> A1044-1049.



counsel filed the Amended Motion for Judgment of Acquittal<sup>23</sup> with an accompanying Memorandum of Law.<sup>24</sup> The State filed its Response on July 29, 2024.<sup>25</sup> The defense filed its Reply on August 2, 2024.<sup>26</sup>

On August 12, 2024, the Superior Court issued an Opinion and Order denying the Amended Motion for Judgment of Acquittal.<sup>27</sup>

### ***Sentencing and appeal***

On November 22, 2024, the Court sentenced Mr. Henry<sup>28</sup> to life in prison plus 39 years and three months of additional prison time.<sup>29</sup>

Through the undersigned counsel, Mr. Henry filed a timely notice of appeal. This is Mr. Henry's Opening Brief.

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<sup>23</sup> A1052.

<sup>24</sup> A1053-1077.

<sup>25</sup> A1238-1267.

<sup>26</sup> A1268-1276.

<sup>27</sup> *State v. Henry*, 2024 WL 3757156 (Del. Super. Aug. 12, 2024); Exhibit B.

<sup>28</sup> A1285-1319.

<sup>29</sup> Exhibit A.

## SUMMARY OF ARGUMENT

### **I. THE SUPERIOR COURT ERRED IN DENYING MR. HENRY'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE STATE NEVER PROVED, OR EVEN ATTEMPTED TO PROVE, THAT MR. HENRY INTENDED TO KILL COREY MUMFORD.**

The State charged Jhalir Henry and two others with the intentional murder of Corey Mumford. The State admitted in opening and closing statements that the defendants did not intend to murder Corey Mumford. The State also admitted it had no idea who the shooter, Shyheem Latham-Purnell, was intending to kill when he shot Mr. Mumford. In between opening and closing statements, of course, was the evidence. No evidence established Mr. Henry's intent to kill Corey Mumford or anyone else for that matter.

Mr. Henry had the right to an indictment that provided a plain, concise, and definite statement of the charges against him. The State chose not to indict Mr. Henry on a theory of transferred intent. Instead, the State charged that Mr. Henry intentionally caused Mr. Mumford's death.

Having failed to prove that Mr. Henry intentionally killed Mr. Mumford, the State failed to prove its case. The Superior Court erred in denying Mr. Henry's Amended Motion for Judgment of Acquittal.

**II. THE STATE DID NOT PROVE MR. HENRY WAS AN ACCOMPLICE TO THE SHOOTER; MOREOVER, EVEN IF HE STARTED OUT AS AN ACCOMPLICE, HE TERMINATED HIS COMPLICITY.**

In a light most favorable to the State, the evidence established that Mr. Henry and his two codefendants, Donregus Holland and Shyheem Latham-Purnell, met up in the parking lot of Hollybrook Apartments. Then they went to 111 Gibson Avenue. There was no evidence presented about what may have been discussed or planned. From there, the trio got into two cars, both driven by unindicted coconspirators, and went to Wexford Village. Once they arrived, witnesses stated that someone named Keishaun Copes went from the front of Building 105 to the back yelling either “Jha’s spinning” or “he’s spinning.” Jha is a nickname for Mr. Henry. Spinning means shooting.

Upon exiting the car, Latham-Purnell immediately went to the backyard of Building 105 and fired at least eight shots at Mr. Mumford, killing him. Mr. Henry got out of one of the cars and stood on the sidewalk doing nothing for a moment. Then he started shooting into the air, in the opposite direction of where Mr. Mumford was being murdered. He then went partway around the side of Building 105, but did not make it to the backyard. He returned to the car without firing any further shots. All his shell casings landed in the parking lot

The State failed to establish that Mr. Henry was an accomplice to the killer, Latham-Purnell. The prosecutor argued that “legally speaking, it does not matter

whose bullet or bullets actually caused Corey's death because they were all acting in concert with one another and they were all acting with the same goal in mind."<sup>30</sup> But that was not the case. The State had to prove that the defendant encouraged the principal to commit the murder. It did not.

But even had the State proven Mr. Henry was an accomplice, the facts establish that Mr. Henry, if he was an accomplice, was no longer an accomplice once he got out of the car. In other words, whatever unknown plan was hatched on Gibson Street, Mr. Henry was not a part of it when he arrived at Wexford Village. He did not go to the backyard where Latham-Purnell clearly knew his target would be. He instead stood in the parking lot and fired meaningless shots in the air. That wholly deprived his complicity of its effectiveness within the meaning of 11 *Del. C.* § 273(3)(a).

The Superior Court erred in finding that Mr. Henry was an accomplice that did not terminate his complicity before the commission of the offense. This Court should reverse.

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<sup>30</sup> A965.

## STATEMENT OF FACTS

Corey Mumford was shot down by 9mm gunfire behind an apartment building in Wexford Village Apartments in Laurel. As the State admitted from the outset, he was not the intended target and there was no evidence of the identity of the intended target. Indeed, the prosecutor said in her opening statement that “Corey was likely an unintended target, just someone in the wrong place at the wrong time, and subject to a random, senseless act of violence.”<sup>31</sup>

The evidence was somewhat convoluted because most witnesses contradicted other witnesses and even themselves on key points. The trial witnesses<sup>32</sup> testified as follows:

### ***Elaine Parker – Corey Mumford’s grandmother***

Ms. Parker testified that at the time of his death, Mr. Mumford was an 18 year-old senior at Laurel High School.<sup>33</sup> On the morning of April 14, 2023, Mr. Mumford was at Parker’s house with his cousin Larry Horsey, who lived there.<sup>34</sup> They left the house around 12:15.<sup>35</sup> Later that afternoon, Parker heard gunshots,

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<sup>31</sup> A158.

<sup>32</sup> Excluding the non-substantive witnesses who merely laid foundations for the admission of evidence.

<sup>33</sup> A171-172.

<sup>34</sup> A174.

<sup>35</sup> A177.

followed by Larry Horsey running back to the house to tell her that Corey had been shot.<sup>36</sup>

***Brent Scott – EMT***

Brent Scott responded to a dispatch for a shooting at 2:44 PM on April 14, 2023.<sup>37</sup> He went behind Wexford Village Apartments because there was a well-known hole in the fence behind the complex.<sup>38</sup> He treated Mr. Mumford by performing CPR.<sup>39</sup> Despite treatment, Mr. Mumford could not breathe independently and had no pulse.<sup>40</sup>

***Martin Yang, MD – emergency room attending physician***

Dr. Yang and his team attempted lifesaving measures. Dr. Yang pronounced Mr. Mumford dead at 3:44 PM.<sup>41</sup>

***Detective Alan Bluto – Chief Investigating Officer***

Detective Bluto works for the Delaware State Police Homicide Unit.<sup>42</sup> He arrived on scene at 4:25 and liaised with Detective Little of Laurel Police.<sup>43</sup> Using photographs, he explained the location of Wexford Village and the nearby Little

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<sup>36</sup> A178.

<sup>37</sup> A195.

<sup>38</sup> A196.

<sup>39</sup> *Id.*

<sup>40</sup> A198.

<sup>41</sup> A210.

<sup>42</sup> A214.

<sup>43</sup> A215.

Creek Apartments and Hollybrook Apartments.<sup>44</sup> Through Bluto, the State played the 911 calls.<sup>45</sup>

Next, Bluto testified about some security camera video. He collected footage from Hollybrook, Little Creek, and a nearby business called The Corner Garage.<sup>46</sup> Wexford Village had no security cameras.<sup>47</sup>

***Officer Ashley Little – Laurel Police Department***

Officer Little works for the Laurel Police criminal investigations unit.<sup>48</sup> She responded to a dispatch for the shooting at Building 105 of Wexford Village.<sup>49</sup> She immediately saw Elijah Witherspoon, who lived at in the rear apartment of Building 105 and asked him what happened.<sup>50</sup> Her bodycam also showed some interaction with Nakiya Jacobs. Both Witherspoon and Jacobs would later be called as State witnesses. Jacobs provided an identification of Mr. Henry and the clothing he was wearing.<sup>51</sup>

On cross-examination, Little testified further about her interaction with Witherspoon at the scene. As shown on her body camera, Little asked Witherspoon

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<sup>44</sup> A216-219.

<sup>45</sup> A224.

<sup>46</sup> A225-227.

<sup>47</sup> A227.

<sup>48</sup> A235.

<sup>49</sup> A236.

<sup>50</sup> A237.

<sup>51</sup> A249.

if he had seen anything. He replied, “I swear I didn’t, yo. I was in the house.”<sup>52</sup>

Several seconds later, she asked the assembled crowd if they had seen anything.

Witherspoon replied, “I don’t know. I don’t know.”<sup>53</sup> A few moments later, Little promised Witherspoon, “if you hear anything, I’ll keep your name out of the record.”<sup>54</sup>

***Tasha Bull – resident of Wexford Village Apartments.***

Tasha Bull resided in Building 100 of Wexford Village, which is across the street from Building 105.<sup>55</sup> From her bedroom window, she saw a silver or gray car enter the parking lot. A few moments later, she heard gunshots.<sup>56</sup> When she glanced out her window again, she saw “a few guys running back towards my area, but I didn’t see nobody’s face.”<sup>57</sup> She could not tell what race they were, but she did notice they were clad in all black.<sup>58</sup> The silver car then sped away.<sup>59</sup>

After the men left in the car, Bull went around to the back of Building 105 and saw the victim laying on the ground surrounded by other “little kids.”<sup>60</sup>

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<sup>52</sup> A242.

<sup>53</sup> *Id.*

<sup>54</sup> A243.

<sup>55</sup> A253.

<sup>56</sup> A253-254.

<sup>57</sup> A256.

<sup>58</sup> *Id.*

<sup>59</sup> A259

<sup>60</sup> A260.



After having her memory refreshed on cross-examination, Bull agreed that she had told police at the time that it was five or six men running from Building 105 towards the silver car, and they all were wearing masks.<sup>61</sup> On redirect, she clarified that the car was a late-model Volkswagen Jetta.<sup>62</sup>

***Cristina Perez – resident of Wexford Village Apartments***

Christina Perez lived in the rear apartment of Building 100 – the same building as Tasha Bull.<sup>63</sup> After the gunshots, she saw two people return to a car that was parked there. According to Perez, one person was already in the car ready to drive off.<sup>64</sup> Of the two men, she noted that one of them was wearing a gray hoodie.<sup>65</sup> The person in the gray hoodie was wearing pants and was not wearing a mask.<sup>66</sup>

***Officer Ashley Little – Laurel Police Department***

Officer Little began marking shell casings prior to the arrival of the Delaware State Police.<sup>67</sup> She lacked evidence markers, and the pieces of paper she was using began blowing away.<sup>68</sup> She eventually got her own placards, placed

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<sup>61</sup> A264.

<sup>62</sup> A267. Witnesses referred to the car as a Jetta, but Detective Lowe testified it is actually a Volkswagen Arteon, which is like a Jetta. A835

<sup>63</sup> A281.

<sup>64</sup> A284-285.

<sup>65</sup> A287.

<sup>66</sup> A290.

<sup>67</sup> A295.

<sup>68</sup> A296.

them, and picked up the casings.<sup>69</sup> Then the State Police arrived and asked her to show her where the casings had been so they could mark the evidence. Using photos from her phone, she approximated the location of each casing.<sup>70</sup> The casings were all in front of Building 103, which is next to Building 105.<sup>71</sup>

***Josee Lazarre – resident of Wexford Village Apartments***

Josee Lazarre lived in the front apartment of Building 107.<sup>72</sup> On April 14, 2023, she was working from home.<sup>73</sup> She heard multiple gunshots.<sup>74</sup> She looked out her window and saw three cars parked together. She saw people running to the cars and driving off.<sup>75</sup> She did not get a good look at them.<sup>76</sup> Coincidentally, Lazarre also owned a silver Jetta, which was parked in the same parking lot.<sup>77</sup>

***Detective Keith Collins – evidence detection***

Detective Collins went to the scene at 4:30 PM to collect and process evidence. Officer Little handed him the bag of casings she had collected.<sup>78</sup> With Little's assistance, he placed his own placards.<sup>79</sup> The casings were generally in

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<sup>69</sup> 297-298.

<sup>70</sup> A299.

<sup>71</sup> A300.

<sup>72</sup> A309.

<sup>73</sup> A310.

<sup>74</sup> A311.

<sup>75</sup> A312-313.

<sup>76</sup> A315.

<sup>77</sup> A318-319.

<sup>78</sup> A323.

<sup>79</sup> A324.

front of Building 103, which is next to Building 105.<sup>80</sup> A separate cluster of casings was located in the backyard behind Building 105, along with blood.<sup>81</sup> A third cluster was found near the left rear corner of Building 105.<sup>82</sup>

***Larry Horsey – cousin of Mr. Mumford and eyewitness***

Larry Horsey was 16 years old at the time of the homicide.<sup>83</sup> He lived with his grandmother, Elaine Parker.<sup>84</sup> On April 14, 2023, he took a walk to the backyard in Wexford Village by going through the hole in the fence.<sup>85</sup> He was hanging out with a friend named Tyree.<sup>86</sup> Corey Mumford then arrived and everyone was “chilling.”<sup>87</sup> More friends arrived, including Kiya, Kylie, and Ling.<sup>88</sup> There were plans to go to Ocean City to celebrate Kiya’s birthday.<sup>89</sup> (Kiya is a nickname for State witness Nakiya Jacobs.) They all returned to the car they arrived in, while Mr. Mumford and Horsey stayed in the backyard.<sup>90</sup>

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<sup>80</sup> A326.

<sup>81</sup> A329.

<sup>82</sup> A330.

<sup>83</sup> A352.

<sup>84</sup> A353.

<sup>85</sup> A362.

<sup>86</sup> A363.

<sup>87</sup> A364.

<sup>88</sup> *Id.*

<sup>89</sup> A367.

<sup>90</sup> A368.

Next, Horsey heard someone say “somebody spinning.” Spinning is slang for shooting.<sup>91</sup> He then clarified that the person said “Jha spinning.”<sup>92</sup> Jha is a nickname for Jhalir Henry. He then reverted to the unknown person yelling “he’s spinning.”<sup>93</sup>

Horsey then saw someone coming around and start shooting. Horsey began running.<sup>94</sup> The person he saw shooting wore a mask.<sup>95</sup> He a second masked man coming from the other direction.<sup>96</sup> The first person, the one in the backyard where Mr. Mumford was, wore all black and a mask.<sup>97</sup> He had a handgun.<sup>98</sup> That was the one who fired the shots in the backyard.<sup>99</sup>

As Horsey ran, he stumbled. When he got up, he saw the second masked man on the other side of the building.<sup>100</sup> He was also in all black wearing a mask.<sup>101</sup> He had a firearm too, but Horsey did not see or hear him shoot.<sup>102</sup>

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<sup>91</sup> A369.

<sup>92</sup> A370.

<sup>93</sup> A374.

<sup>94</sup> *Id.*

<sup>95</sup> A376.

<sup>96</sup> A380.

<sup>97</sup> A382.

<sup>98</sup> A383.

<sup>99</sup> A384.

<sup>100</sup> A384-385.

<sup>101</sup> A385.

<sup>102</sup> A387.

Horsey made it to the Wexford Village office and caught his breath. He saw an Audi sedan drive by.<sup>103</sup> He then went back to the backyard and saw his cousin on the ground. Kiya (Nakiya Jacobs) was with him.<sup>104</sup>

Horsey described the backyard shooter as a heavysset black male wearing black, but stopped short of saying who he thought it was.<sup>105</sup> The State then laid a foundation to play Horsey's two statements by way of 11 *Del. C.* § 3507.<sup>106</sup> The statements were played. After the statements were played, Horsey denied knowing several people whose names he mentioned in the interviews.<sup>107</sup> He also identified Mr. Henry in court as Jha, and Donregus Holland as the person he knew as Riggy.<sup>108</sup>

On cross-examination, Horsey testified that he did not see Mr. Henry in the backyard, or for that matter, at all that day.<sup>109</sup> After some prompting, Horsey admitted he had told police that he thought, despite the mask, that the backyard shooter was Shyheem Latham-Purnell.<sup>110</sup>

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<sup>103</sup> A390.

<sup>104</sup> A393-394.

<sup>105</sup> A396.

<sup>106</sup> A399.

<sup>107</sup> A407-409.

<sup>108</sup> A410.

<sup>109</sup> A413.

<sup>110</sup> A414-415.

Horsey testified that when the shooting occurred, everybody ran. No one attempted to go in the back door of Elijah Witherspoon's residence, contrary to Witherspoon's statement.<sup>111</sup>

The second shooter on the other side of the building was not shooting at the time Horsey saw him. He was coming around to the other side of the building.<sup>112</sup> Horsey could not say who that was.<sup>113</sup> As Detective Collins testified, a cluster of shell casings were found on that side of the building.

***Nakiya Jacobs – eyewitness***

On April 14, 2023, Nakiya Jacobs had plans to go to Ocean City with friends to celebrate her birthday.<sup>114</sup> She and her friends drove out to Wexford Village to tell people there the location of the hotel.<sup>115</sup> While she was sitting in the car, she saw two cars arrive.<sup>116</sup> They pulled in "too perfectly together."<sup>117</sup> They were both newer model sedans; one was gray.<sup>118</sup> Jacobs believed one was a "wagon," which is apparently slang for Volkswagen.<sup>119</sup> She saw two people get out of the car.<sup>120</sup>

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<sup>111</sup> A416.

<sup>112</sup> A417-418.

<sup>113</sup> A418.

<sup>114</sup> A425.

<sup>115</sup> A431-432.

<sup>116</sup> A438.

<sup>117</sup> A440.

<sup>118</sup> A442.

<sup>119</sup> A443; A458.

<sup>120</sup> A444.

The first man, who was masked up, ran to the backyard of Building 105.<sup>121</sup> The second one, whom she identified as Jhalir Henry, stood in front of her car in the parking lot.<sup>122</sup> He was wearing blue and yellow shorts and a gray hoodie.<sup>123</sup> Mr. Henry had a black gun in his hand. He just stood there for a while.<sup>124</sup> Meanwhile, Jacobs was already hearing shots being fired from behind Building 105. Mr. Henry did nothing for a moment, then fired some shots by the side of her car and into the air.<sup>125</sup> Specifically, he was standing on the sidewalk shooting in the air past her car in the direction of the buildings across the street.<sup>126</sup> Jacobs presumed that Mr. Henry's shots were the source of the casings in the front parking lot.<sup>127</sup>

After shooting into the air, Mr. Henry started going around the corner of the Building 105 in the direction of the backyard.<sup>128</sup> But he did not make it fully back there.<sup>129</sup> Instead, he went back to the cars and the cars left.<sup>130</sup> Jacobs clarified that Mr. Henry did not go all the way behind the building and she could still see him

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<sup>121</sup> A447.

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

<sup>123</sup> A448.

<sup>124</sup> A449.

<sup>125</sup> A451.

<sup>126</sup> A468.

<sup>127</sup> A470.

<sup>128</sup> *Id.*

<sup>129</sup> A452.

<sup>130</sup> A453.

from her vantage point.<sup>131</sup> Jacobs told the police that once Mr. Henry left the front parking lot, he was no longer firing shots.<sup>132</sup>

Jacobs believed it was the man wearing the mask – the one Horsey identified as Latham-Purnell – who went around the back and killed Mr. Mumford.<sup>133</sup> Indeed, Jacobs surmised that Mr. Henry did not fire more shots because he realized “who that was back there.”<sup>134</sup> Even as Mr. Henry was returning from his partway trip to the back yard, the shooter was still shooting.<sup>135</sup> He was shooting exactly where Mr. Mumford was felled.<sup>136</sup> When the two men returned to the cars, Mr. Henry was moving slower than the backyard shooter.<sup>137</sup>

Jacobs went to the backyard of Building 105. She saw Corey Mumford on the ground gasping for air.<sup>138</sup> She immediately called 911.<sup>139</sup>

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<sup>131</sup> A471.

<sup>132</sup> A472.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> A473.

<sup>136</sup> A474.

<sup>137</sup> *Id.*

<sup>138</sup> A455.

<sup>139</sup> A456.



***Elijah Witherspoon – resident of the back apartment of Building 105***

Before calling Elijah Witherspoon, the State briefly called Detective Bluto. He testified that Sergeant Bauer interviewed Witherspoon briefly about four hours after the homicide. The State played the two-minute video of that interaction.<sup>140</sup>

Witherspoon testified that he resided in the back apartment of Building 105 at Wexford Village.<sup>141</sup> Witherspoon testified that he was in his kitchen and heard the shots. According to him, he opened his back door which led to the backyard.<sup>142</sup> He saw someone standing over a prone Mr. Mumford.<sup>143</sup> Next, two boys ran into his house: Rakeem West and Tyree Cornish.<sup>144</sup> They pushed Witherspoon out of the way to get into the apartment.<sup>145</sup>

Witherspoon testified that he saw Jhalir Henry standing over Mr. Mumford. He was not wearing a mask.<sup>146</sup> Witherspoon could not remember what Mr. Henry was wearing but testified that he did have a handgun.<sup>147</sup> Mr. Henry then sprinted

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<sup>140</sup> A503-504.

<sup>141</sup> A507.

<sup>142</sup> A510.

<sup>143</sup> A511.

<sup>144</sup> A512-513.

<sup>145</sup> A514.

<sup>146</sup> A515.

<sup>147</sup> A516.

away.<sup>148</sup> Witherspoon testified that he stayed with Mr. Mumford for about five minutes.<sup>149</sup>

From the back corner of the building, Witherspoon said he saw Mr. Henry and Latham-Purnell in the parking lot.<sup>150</sup> He also testified that he saw another person returning fire.<sup>151</sup> But he declined to say who that person was.<sup>152</sup> In any event, he saw the men get in a gray car and drive away. The Volkswagen belonged to a person named Gary, who he knew as Geezy.<sup>153</sup>

Witherspoon knew Mr. Henry to drive a blue Mazda. He had seen Mr. Henry and Purnell earlier that day.<sup>154</sup> Mr. Henry was parked at 111 Gibson Street sitting in his Mazda.<sup>155</sup> A female was with him.<sup>156</sup> 111 Gibson Avenue is the residence of Geezy. At the time, Mr. Henry had a bandage on his hand from an IV drip.<sup>157</sup>

Witherspoon testified that he did not tell Officer Little what he had seen and he was not sure why.<sup>158</sup>

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<sup>148</sup> A517.

<sup>149</sup> A518.

<sup>150</sup> A519.

<sup>151</sup> A520.

<sup>152</sup> A522.

<sup>153</sup> A523.

<sup>154</sup> A524.

<sup>155</sup> A525.

<sup>156</sup> A526.

<sup>157</sup> A527.

<sup>158</sup> A528.

The prosecutor asked Witherspoon what he told Sergeant Bauer four hours after the homicide. He readily mentioned Mr. Henry's name but was recalcitrant to say he had identified Holland. The prosecutor played the video again again, in which Witherspoon stated the names of all three defendants, then said, "I shouldn't even be talking to you."<sup>159</sup> When the prosecutor dragged out of Witherspoon that he had named Holland, Witherspoon protested that he was intoxicated at the time and was only repeating what he had heard from others.<sup>160</sup> On the other hand, he testified that his identification of Mr. Henry was based on what he saw.<sup>161</sup>

The State then played Witherspoon's two statements – one from the night of the homicide and several months later in September 2023. After the statements were played, Witherspoon conceded that he had identified Holland as having a tan gun at the murder scene.<sup>162</sup>

On cross-examination, defense counsel confronted Witherspoon with the footage of him telling Officer Little that he did not see the shooting. But Witherspoon was living by the "street code," according to him.<sup>163</sup>

During his statement on the night of the homicide, Witherspoon told the detectives that he heard the shots, then went outside and saw all three codefendants

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<sup>159</sup> A530.

<sup>160</sup> A530-531.

<sup>161</sup> A531.

<sup>162</sup> A540.

<sup>163</sup> A545.

standing over Mr. Mumford – wearing all black and all wearing masks.<sup>164</sup> At trial, Witherspoon testified that he made all that up. But the part about the two boys running into his house was true.<sup>165</sup> Witherspoon denied seeing Nakiya Jacobs in the backyard after the shooting, despite her testimony that she went back there immediately after the shooting.<sup>166</sup>

In his September 2023 statement, Witherspoon told police he saw the cars arrive at Wexford Village – which was fabricated, according to his testimony. He also agreed that he changed his story from seeing all three codefendants in his backyard to just Mr. Henry.<sup>167</sup> He could not explain why. Witherspoon was asked why he was suddenly omitting Holland from his narrative. He testified that anything he said in the past about Holland was untrue.<sup>168</sup>

***Tyree Cornish – was present at the time of the shooting***

Tyree Cornish, age 19, began his testimony by denying that he was present at Wexford Village on April 14, 2023.<sup>169</sup> The prosecutor immediately began to lay a 3507 foundation. Cornish agreed that he had been interviewed by a Detective Saylor about his own legal troubles on May 19, 2023, when the discussion turned

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<sup>164</sup> A551.

<sup>165</sup> *Id.*

<sup>166</sup> A554.

<sup>167</sup> A557.

<sup>168</sup> A558.

<sup>169</sup> A592.

to the Mumford homicide.<sup>170</sup> But he denied that his statement was voluntary. He also testified that his prior statement was untrue.<sup>171</sup>

Next, the prosecutor asked Cornish about his June 1, 2023 interview with Detective Bluto about the homicide. Cornish testified that he did not speak to Bluto voluntarily.<sup>172</sup> He also claimed that his June 6, 2023 follow-up interview with Bluto was not voluntary, even though he had requested the meeting. Cornish testified that he only told Bluto what he had heard about the shooting.<sup>173</sup> He claimed that he was forced to give the June 6 statement by his grandmother.<sup>174</sup>

On the witness stand, Cornish distanced himself from the shooting. He testified that he was walking past Little Creek and heard shots. He denied that he was present and that he saw anyone with a firearm.<sup>175</sup>

The State sought to play all three interviews as 3507 statements. Defense counsel opposed, because the witness claimed the statements were not voluntary. The judge permitted the introduction of the statements provisionally, as it was a bench trial. Then the judge would decide later whether to consider the

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<sup>170</sup> A592-593.

<sup>171</sup> A593.

<sup>172</sup> *Id.*

<sup>173</sup> A594.

<sup>174</sup> A597.

<sup>175</sup> A595.

statements.<sup>176</sup> Specifically, the judge found that all foundational requirements had been met except the voluntariness requirement.<sup>177</sup>

Detective Saylor from the State Police testified that he interviewed Cornish on an unrelated matter on May 18, 2023 on his possible involvement in a different shooting.<sup>178</sup> Saylor read Cornish his Miranda rights and Cornish agreed to speak to him.<sup>179</sup> Then Saylor re-interviewed him the next day. With that, the State played the May 19 statement. Saylor agreed that he had told Cornish that he had a lot of pull with the AG's office.<sup>180</sup>

Detective Bluto then testified about his two interviews of Cornish. He had been told by Saylor or another detective that Cornish may have information about the Mumford case.<sup>181</sup> Bluto testified that Cornish spoke to him voluntarily on June 1, 2023. The State played the interview.<sup>182</sup> At the conclusion of the interview, Cornish asked Bluto if he could help him with his own charges.<sup>183</sup> Bluto told him he would discuss it with the prosecutors.<sup>184</sup>

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<sup>176</sup> A603.

<sup>177</sup> A607-608. Defense counsel later conceded the statements were voluntary.

<sup>178</sup> A609.

<sup>179</sup> A610.

<sup>180</sup> A621.

<sup>181</sup> A630.

<sup>182</sup> A632.

<sup>183</sup> A641.

<sup>184</sup> A642.

Bluto reviewed Saylor’s May 19, 2023 interview with Cornish, in which Cornish stated that he saw Mr. Henry shooting straight into the ground and that someone else killed Mr. Mumford. But by the time Bluto interviewed Cornish, he had changed his story to someone else shooting into the ground and Mr. Henry was “shooting to kill.”<sup>185</sup> Bluto did not inquire at all into this 180-degree change from one statement to the next.<sup>186</sup> Nor did Bluto press Cornish on his statement that Mr. Henry was shooting into the ground, as it was at odds with Jacobs’ statement that he was shooting into the air.<sup>187</sup>

Next, Bluto testified that he received a phone call from Cornish on June 5, 2023, asking him to come back so he could provide further information.<sup>188</sup> Bluto did so on June 6, 2023. The quality of the June 6 recording was so poor and garbled that the judge could not understand most of it.<sup>189</sup> Bluto testified that he thought he mistakenly left the recorder in his binder rather than place it on the table.<sup>190</sup>

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<sup>185</sup> A644-645.

<sup>186</sup> A645.

<sup>187</sup> A646.

<sup>188</sup> A647.

<sup>189</sup> A651-652.

<sup>190</sup> A655.

On June 6, 2023, Cornish explained his reasoning for asking the detective back: “Like man, I need to get up out of there, too. Like, this helps my freedom. I’m trying to get my freedom back.”<sup>191</sup>

When he resumed testifying, Cornish identified Mr. Henry and Holland in the courtroom.<sup>192</sup> He also testified that he knew “Lil Cuz” from the neighborhood. Lil Cuz drove an Audi around the time of the homicides.<sup>193</sup> He also knew Geezy, who drove a Volkswagen.<sup>194</sup> Later in the trial, Geezy was identified as Gary Akins and Lil Cuz was identified as Jaonta Ancrum.

Cornish testified that he was at Building 105 on the day of the shooting. He heard the shots and took off running. Then he went home because he was on probation.<sup>195</sup> He told the police that there were three shooters and one of them was Mr. Henry, who shot into the ground. But he clarified that he did not really see anything; he was just telling the detective what he heard on the street.<sup>196</sup> For example, he told Bluto on June 1, 2023 that there were four shooters dressed all in black.<sup>197</sup>

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<sup>191</sup> A657.

<sup>192</sup> A661-662.

<sup>193</sup> A662.

<sup>194</sup> A663.

<sup>195</sup> A669-670.

<sup>196</sup> A671.

<sup>197</sup> A677.



Cornish contradicted Witherspoon’s story that he and another person ran into Witherspoon’s apartment when the shots were fired. Cornish took off running.<sup>198</sup>

Cornish testified that his grandmother “forced” him to contact Bluto again to give an additional statement on June 6, 2023.<sup>199</sup> By that time, Cornish admitted, he was hoping for leniency on his own case.<sup>200</sup> He realized that he had not gotten any help from giving his first two statements, so he had to tell Bluto something different to get less jail time on his own case.<sup>201</sup> But he again confirmed that anything he told Bluto was rumors he had heard on the streets.<sup>202</sup>

What Cornish did hear before taking off running is Keishaun Copes say, “Jhalir is coming.”<sup>203</sup> Copes was one of the occupants of Nakiya Jacobs’ car.

***Officer Kevin Lieber – conducted traffic stop on Mr. Henry’s girlfriend’s Mazda and reviewed security camera footage.***

Based on Nakiya Jacobs’ identification of Mr. Henry being present at the scene, there was a lookout for a Mazda that Mr. Henry often drove.<sup>204</sup> Lieber conducted a traffic stop on the car for speeding at 6:27 PM on April 14, 2023.<sup>205</sup>

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<sup>198</sup> A678.

<sup>199</sup> A681.

<sup>200</sup> A682.

<sup>201</sup> A683.

<sup>202</sup> A685.

<sup>203</sup> A692.

<sup>204</sup> A702.

<sup>205</sup> A703.

Mr. Henry's girlfriend and two other females were in the car. Mr. Henry was not.<sup>206</sup>

Lieber reviewed security camera footage from Hollybrook Apartments in Laurel. On April 14, 2023, the silver Jetta, the brown Audi, and Mr. Henry's Mazda were all parked there at around 2:30 PM.<sup>207</sup> The driver of the Jetta was Gary Akins, aka Geezy.<sup>208</sup>

***James Storey – forensic firearm examiner***

Mr. Storey examined the ballistics evidence, which consisted of shell casings and discharged projectiles.<sup>209</sup> Three 9mm projectiles were found in Mr. Mumford's body during the autopsy.<sup>210</sup> All the other 9mm casings were recovered from behind Building 105, as indicated by the evidence markers.<sup>211</sup> Storey opined that all the 9mm projectiles and casings were fired from the same firearm.<sup>212</sup>

Storey next turned to the .40 caliber ballistics. He testified that, based on characteristics, they were fired from two different guns.<sup>213</sup> One group was fired from one .40 caliber firearm and the other group was fired from a separate one.<sup>214</sup>

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<sup>206</sup> A704.

<sup>207</sup> A705-709.

<sup>208</sup> A709.

<sup>209</sup> A730.

<sup>210</sup> A733.

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

<sup>212</sup> A734.

<sup>213</sup> A735.

<sup>214</sup> A737.

Storey's evidence log indicated that the 9mm evidence was found in the backyard of Building 105, one group of .40 caliber evidence was found in the front of the building, and the other group was found on the northside corner of the building.<sup>215</sup>

***Detective Alan Bluto – review of security camera footage***

Bluto retook the stand to testify about his review of camera footage from Hollybrook Apartments, Little Creek Apartments, and the corner garage.<sup>216</sup> He used screenshots and video clips during his testimony. The testimony was lengthy and convoluted, but the gist is that by 2:21 PM, the black Mazda, the gray Audi, and the silver Jetta were all parked at Hollybrook.<sup>217</sup> A person in a gray hoodie, who the State later argued was Mr. Henry, then got into the passenger seat of the Mazda.<sup>218</sup> The cars then left for 111 Gibson Avenue. Then the Audi and the Jetta leave 111 Gibson Avenue just minutes before the shooting.<sup>219</sup>

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<sup>215</sup> A752.

<sup>216</sup> A759.

<sup>217</sup> A885.

<sup>218</sup> A886.

<sup>219</sup> A888.

***Gary Collins, MD – performed autopsy***

Dr. Collins testified that Mr. Mumford died from multiple gunshot wounds, particularly one that went through his aorta.<sup>220</sup> The manner of death was homicide.<sup>221</sup>

***Detective Roy Lowe – evidence detection and processing***

Detective Lowe arrived on-scene at 4:35.<sup>222</sup> Using photographs, he identified the eight casings found in front of Building 105.<sup>223</sup> He collected eight more casings from the backyard where Mr. Mumford was shot.<sup>224</sup> He collected four additional casings from the northwest corner of Building 105.<sup>225</sup> Lowe processed all the casings for fingerprints but found none.<sup>226</sup>

Lowe searched Mr. Henry's Mazda and recovered a gray hoodie.<sup>227</sup> He also processed Gary Akin's rental Volkswagen Arteon (the car witnesses referred to as a Jetta).<sup>228</sup> He recovered a black ski mask from the floor of that car.<sup>229</sup>

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<sup>220</sup> A802.

<sup>221</sup> A803.

<sup>222</sup> A807.

<sup>223</sup> A812.

<sup>224</sup> A813.

<sup>225</sup> A816.

<sup>226</sup> A826.

<sup>227</sup> A831.

<sup>228</sup> A835.

<sup>229</sup> A838.

*The State plays Jhalir Henry's police interview.*

Detective Bluto and Sergeant Yeich interviewed Jhalir Henry upon his arrest on April 21, 2023.<sup>230</sup> Mr. Henry told the police that he was released from the hospital the afternoon of the shooting.<sup>231</sup> Specifically, he was at PRMC in Salisbury being treated for ulcers.<sup>232</sup> Mr. Henry told the detectives he has been released by the time the shooting occurred.<sup>233</sup> He expressed frustration that people were saying he was at Wexford Village that day. If he was, he said, then Corey Mumford would not have been shot.<sup>234</sup> He knew Corey well and was friends with him.<sup>235</sup>

Mr. Henry initially stated that from the hospital, his girlfriend drove him to her house in Delmar.<sup>236</sup> But he admitted that they did stop at Hollybrook Apartments.<sup>237</sup> Mr. Henry repeatedly stated that he did not go to Wexford Village, did not kill Corey, and does not know who did.<sup>238</sup> The detectives continually accused him of getting out of his car and getting into one of the two cars that went

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<sup>230</sup> A1320-1390. The interview was heavily redacted for trial, as much of it was detective narrative and interrogation techniques.

<sup>231</sup> A1325-1326.

<sup>232</sup> A1328.

<sup>233</sup> A1373.

<sup>234</sup> A1324-1325.

<sup>235</sup> A1326.

<sup>236</sup> A1328-1329.

<sup>237</sup> A1340.

<sup>238</sup> *See, e.g.*, A1342.

to Wexford Village. Mr. Henry continued to deny it.<sup>239</sup> He agreed that he and his girlfriend visited “Reggie’s grandma” on Gibson Avenue but left after that.<sup>240</sup> Mr. Henry continued to protest that he was in his girlfriend’s Mazda, but Bluto told him that he was not in the Mazda when the car got pulled over “about an hour” later.<sup>241</sup> As Bluto later admitted on cross-examination, the traffic stop was four hours after the shooting.<sup>242</sup>

As the interrogation continued, Mr. Henry expressed hope that the camera footage could be obtained because it would prove he was not at Wexford Village.<sup>243</sup> He told the detectives he was wearing orange and blue shorts and a gray hoodie that day. He had “slides” (sandals) on his feet.<sup>244</sup>

Mr. Henry again explained that his girlfriend picked him up at the hospital. They went to Hollybrook Apartments, then to the house on Gibson Street. Then they left for his girlfriend’s house in Delmar. When the shooting occurred, they went back to Laurel, because his girlfriend’s little brother was there and she was concerned. She dropped Mr. Henry off at his brother’s house, because he was not feeling well. Then she went to pick up Mr. Henry’s mother, who was with her

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<sup>239</sup> A1327-1348.

<sup>240</sup> A1351.

<sup>241</sup> A1376.

<sup>242</sup> A907.

<sup>243</sup> A1357.

<sup>244</sup> A1361-1362.

when the police pulled the car over.<sup>245</sup> Mr. Henry repeatedly denied being in Wexford Village that day or being involved in the homicide.

***Detective Alan Bluto – wrapping up the State’s case***

Detective Bluto testified that the Audi was registered to Lil Cuz’s mother. Lil Cuz is Jaonta Ancrum.<sup>246</sup> Ancrum posted photos on social media of himself with the Audi.<sup>247</sup> Bluto attempted to interview Ancrum but Ancrum declined.<sup>248</sup> Bluto sought to search Ancrum’s Audi but police were unable to locate the car.<sup>249</sup> Despite all indications being that Ancrum drove the Audi from Gibson Street to Wexford Village, Bluto testified that he was not given permission to arrest him.<sup>250</sup>

Bluto testified that Gary Akins aka Geezy, was Holland’s cousin. They share the same grandmother, who lived at 111 Gibson Avenue.<sup>251</sup> The Court had issued a material witness warrant for Akins, but he was not found. As such, the judge vacated the capias.<sup>252</sup>

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<sup>245</sup> A1381-1383.

<sup>246</sup> A898-899.

<sup>247</sup> A909.

<sup>248</sup> A899.

<sup>249</sup> A900.

<sup>250</sup> A910

<sup>251</sup> *Id.*

<sup>252</sup> A969.

The State rested.<sup>253</sup> After a colloquy, Mr. Henry elected not to testify.<sup>254</sup> The defense rested.<sup>255</sup>

***The State admits in closing argument that the intended victim was not Mr. Mumford, and moreover, the intended victim was unknown.***

In its closing argument, the State admitted that it may have not been Corey Mumford that the defendants were trying to kill: “they may have intended to kill someone else, but Corey Mumford died because those men were firing off shots into a crowd or into a populated area.”<sup>256</sup> The prosecutor continued, stating that “we may never know exactly who the defendants intended to shoot that day.”<sup>257</sup> She speculated that it may have been Keishaun Copes, who had come to the back of the building yelling, “Jha is spinning.”<sup>258</sup> The prosecutor argued that the plan was “to ambush whoever it was that they were looking for, and to rain gun fire down upon that person from multiple different angles.”<sup>259</sup>

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<sup>253</sup> A915.

<sup>254</sup> A919-920.

<sup>255</sup> A919.

<sup>256</sup> A965.

<sup>257</sup> A967.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*



## **ARGUMENT**

### **I. THE SUPERIOR COURT ERRED IN DENYING MR. HENRY’S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE STATE NEVER PROVED, OR EVEN ATTEMPTED TO PROVE, THAT MR. HENRY INTENDED TO KILL COREY MUMFORD.**

#### **Question Presented**

Whether the Superior Court erred in denying Mr. Henry’s Amended Motion for Judgment of Acquittal when the State indicted Mr. Henry with intentionally killing Corey Mumford and then made no attempt to prove it. This issue was preserved by the filing of an Amended Motion for Judgment of Acquittal on July 10, 2024.<sup>260</sup>

#### **Scope of Review**

This Court reviews the Superior Court’s denial of a motion for judgment of acquittal *de novo*. This Court determines “whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of a crime.”<sup>261</sup>

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<sup>260</sup> A1052-1077.

<sup>261</sup> *Lowther v. State*, 104 A.3d 840, 843 (Del. 2014).

## Merits of Argument

### *Applicable legal precepts – the right to indictment*

For over two centuries, the Delaware Constitution has afforded its citizens the right to be proceeded against in a felony prosecution only upon an indictment by a grand jury.<sup>262</sup> An indictment serves at least two purposes: to put the accused on notice of the charges he or she must defend, and to avoid subsequent prosecution for the same offense.<sup>263</sup> Those purposes are served if the indictment contains a plain statement of the elements or essential facts of the crime.<sup>264</sup>

The operative rule implementing these principles states, in relevant part, “the indictment...shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged.”<sup>265</sup>

***The State did not prove, and in fact made no effort to prove, that Mr. Henry intended to kill Corey Mumford.***

The plain, concise, and definite statement of Mr. Henry’s indictment alleges that Mr. Henry “did intentionally cause the death of Corey Mumford.”<sup>266</sup> That is the charge Mr. Henry was on notice that he must defend. He pled not guilty to that charge because he never intended to cause the death of Mr. Mumford.

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<sup>262</sup> *Johnson v. State*, 711 A.2d 18, 26 (Del. 1998).

<sup>263</sup> *Mott v. State*, 9 A.3d 464, 465-466 (Del. 2010).

<sup>264</sup> *Id.* at 466.

<sup>265</sup> Super. Ct. Crim. R. 7(c).

<sup>266</sup> A78.

The State freely admitted that Mr. Henry did not intend to kill Corey Mumford. The prosecutors characterized Mr. Mumford as an unintended target and surmised that his killing was a case of mistaken identity. In her summation, one of the prosecutors stated, “we may never know exactly who the defendants intended to shoot that day.”<sup>267</sup> She asserted that the defendants’ plan was “to ambush whoever it was that they were looking for, and to rain gun fire down upon that person from multiple different angles.”<sup>268</sup>

But the State did not charge Mr. Henry with that plain, concise, definite statement of facts. The State charged him with intentionally killing Mr. Mumford. The Superior Court held that the plain language of our intentional murder statute, the element of intent is “directly linked to the concept of causing another person’s death, not to the identity of the person who died.”<sup>269</sup> Whether that holding is correct or not is immaterial, because the State elected to charge Mr. Henry with intentionally killing Corey Mumford. That charge means the element of intent *is* directly linked to the identify of the person who died. Notably, the State did not seek to amend the indictment and was obligated to prove the charges in the indictment it created and presented to a grand jury.

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<sup>267</sup> A967.

<sup>268</sup> *Id.*

<sup>269</sup> *State v. Henry*, 2024 WL 3757156 at \*3 (Del. Super. Aug. 12, 2024).

***Transferred intent is inapplicable, because the State did not charge transferred intent.***

Had the State chosen to, it could have availed itself of 11 *Del. C.* § 262, which states, in relevant part:

The element of intentional or knowing causation is not established if the actual result is outside the intention or the contemplation of the defendant unless:

(1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused.<sup>270</sup>

The Commentary to the 1973 Delaware Code explains that this section applies when the defendant intends to kill A but instead kills B. Or when an arsonist burns down the wrong house by mistake. The intent transfers.<sup>271</sup> The Commentary cites to *State v. Gardner*,<sup>272</sup> in which the defendant intended to kill James Dennis but instead killed Nancy Lloyd. After reviewing legislative history and cases from other jurisdictions, the Delaware Supreme Court held, quoting Lord Coke, “that a man’s crime is no less heinous because he happens to kill a different person than he *intended to kill*.”<sup>273</sup>

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<sup>270</sup> 11 *Del. C.* 262(1).

<sup>271</sup> *Delaware Criminal Code with Commentary* at 44 (1973).

<sup>272</sup> 203 A.2d 77 (Del. 1964)

<sup>273</sup> *Id.* at 81 (emphasis added).

The transferred intent fact pattern does not arise often, but when it does, the State charges it that way.<sup>274</sup>

The original intent to kill a specific person must be proven before the intent can transfer. Consider the relevant portion of our pattern jury instruction for this statute:

INTENTIONAL OR KNOWING CAUSATION  
[DIFFERENT RESULT THAN EXPECTED]

An element of [charge] is that the defendant [intentionally/knowingly] (intentionally) caused [result](the death of Corey Mumford). The State must prove beyond a reasonable doubt that the defendant actually intended the result.

The State has met its burden of proof when the actual result differed from the intended result: only because a different [person/property] (person) was injured or affected; or only because the injury or harm intended would have been more serious than the actual injury or harm.

Under the statute, the State must prove who the defendant intended to kill before that intent can transfer to a different person, such as Corey Mumford.

The State never mentioned transferred intent at any time in this case, including its closing argument. The prosecutor only brought it up in rebuttal. The prosecutor read the statute and stated, “nothing in that section says the State, as an

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<sup>274</sup> See, *Robinson v. State*, 1992 WL 426349 at \*1 (Del. Dec. 24, 1992)(defendant charged with three counts of Attempted Murder First Degree “predicated upon the doctrine of transferred intent” when defendant intended to kill Gilbert Breister but in doing so shot three bystanders).

element of its case, has to identify the original intended victim.”<sup>275</sup> The Superior Court adopted that theory.<sup>276</sup>

Whether the original intended victim must be identified is irrelevant in Mr. Henry’s case, because the State did not charge him under a theory of transferred intent. When the State’s theory is transferred intent, it is required to indict the case that way: Jhalir Henry, while intending to cause the death of [insert name] caused the death of Corey Mumford. Or as the State would have it: Jhalir Henry, while intending to cause the death of an unidentified person, caused the death of Corey Mumford. But the State did not charge it that way in Mr. Henry’s case.

Even though the State did not charge Mr. Henry under a transferred intent theory and did not argue it until rebuttal closing, the Superior Court decided that transferred intent applied. The State did not ask the Court to do so. At no time during the trial did the State ask the judge to instruct himself on transferred intent. Any such request would have been opposed, because the State was stuck with its own indictment.

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<sup>275</sup> A138.

<sup>276</sup> *Henry* at \*3.

The Superior Court erred in denying Mr. Henry's motion for judgment of acquittal. The State simply did not prove all the elements of the charge in the way the State chose to charge it.<sup>277</sup>

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<sup>277</sup> Mr. Henry should have been acquitted of Murder First Degree, PFDCF, and Conspiracy First Degree. Undersigned counsel has no basis to argue that, in a light most favorable to the State, Mr. Henry should have been acquitted of PFBPP.

**II. THE STATE DID NOT PROVE MR. HENRY WAS AN ACCOMPLICE TO THE SHOOTER; MOREOVER, EVEN IF HE STARTED OUT AS AN ACCOMPLICE, HE TERMINATED HIS COMPLICITY.**

**Question Presented**

Whether the Superior Court erred in denying Mr. Henry’s Amended Motion for Judgment of Acquittal by holding that Mr. Henry was an accomplice to the killer, Latham-Purnell, and by holding that Mr. Henry did not timely terminate his complicity. This issue was preserved by the filing of an Amended Motion for Judgment of Acquittal on July 10, 2024.<sup>278</sup>

**Scope of Review**

This Court reviews the Superior Court’s denial of a motion for judgment of acquittal *de novo*. This Court determines “whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of a crime.”<sup>279</sup>

**Merits of Argument**

***The Superior Court made certain factual findings that are unsupported by the record.***

The Court’s recitation of the facts in a light most favorable to the State<sup>280</sup> is generally accurate. Nakiya Jacobs saw Mr. Henry doing nothing for a moment,

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<sup>278</sup> A1052-1077.

<sup>279</sup> *Lowther v. State*, 104 A.3d 840, 843 (Del. 2014).

<sup>280</sup> *Henry* at \*2-3.



then shooting into the air in the opposite direction from Building 105. But the Court found, “Henry then went to the back of the building 105, where additional shots were fired.”<sup>281</sup> The passive voice is telling. Jacobs testified that Mr. Henry went partway around the back of the building, not all the way, and did not fire any more shots. In fact, he did not fire any shots after leaving the parking lot. The ballistic evidence bears out this fact. The “additional shots were fired” finding is only true as to Latham-Purnell, who was still killing Corey Mumford.

***The State did not prove that Mr. Henry was an accomplice to Latham-Purnell.***

A longstanding principle of accomplice liability is that mere presence at the scene is insufficient to establish accomplice liability. The evidence must affirmatively show that the defendant in some way encouraged the principal to commit the crime before or during its commission.<sup>282</sup>

The State presented no evidence of what plan the defendants formulated either at Hollybrook or at Gibson Avenue – or if a plan was formulated. It can be inferred that *something* was discussed, in a light most favorable to the State. That would account for the three defendants leaving Gibson Avenue and driving to Wexford Village together. The State presented no evidence as to what discussions occurred prior to their arrival.

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<sup>281</sup> *Id.* at \*2.

<sup>282</sup> *Dalton v. State*, 252 A.2d 104, 105 (Del. 1969), *accord*, *Williams v. State*, 539 A.2d 164, 167 (Del. 1988).

Once they arrived, the evidence demonstrated that Purnell went in the backyard and shot Mr. Mumford. Who he was actually trying to kill is unknown. In a light most favorable to the State, Mr. Henry stayed in the parking lot and fired eight shots in the opposite direction. There is no evidence he was aiding, assisting, or encouraging Purnell to kill someone. According to Jacobs, Mr. Henry went partway down the path after shooting in the parking lot. He fired no further shots. Being merely present at Wexford Village and not encouraging Purnell in any way does not establish accomplice liability.

The law permits reasonable inferences from the evidence. And, for the purposes of this appeal, those inferences must be drawn in favor of the State. But the law does not permit inventing evidence to fill gaps. The gap here is that the State presented no evidence that Mr. Henry was acting in concert with Purnell. The State did not even present evidence of any common purpose among the defendants.

Because the State failed to establish Mr. Henry's status as an accomplice to Purnell, the Superior Court erred in finding that he was Latham-Purnell's accomplice.

***Even if Mr. Henry was at some point an accomplice, his subsequent conduct deprived the offense of his complicity.***

Delaware law exempts from criminal liability an accomplice who terminates his complicity. 11 *Del. C.* § 273 states, in relevant part:

Unless otherwise provided by this Criminal Code or by the statute defining the offense, a person is not liable for an offense committed by another person if:

(3) The person terminates complicity prior to commission of the offense and:

a. Wholly deprives it of effectiveness in the commission of the offense;

If the actor's conduct constitutes a separate offense, the actor is liable for that offense only and not for the conduct or offense committed by the other person.<sup>283</sup>

The 1973 Commentary explains that this section “excludes from liability one who terminates his complicity prior to the commission of the offense and deprives his complicity of its effectiveness...”<sup>284</sup> The Commentary goes on to observe, “it seems proper to excuse a man who had a change of heart in time, and who has taken action to eradicate his criminality.”<sup>285</sup>

In *Lee v. State*,<sup>286</sup> the defendant was one of three men who forced their way into a residence and committed robbery there. Later, police searched his residence and found property belonging to the victim.<sup>287</sup> During the robbery, Lee told his two accomplices that they were robbing the wrong house.<sup>288</sup> But he went ahead and

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<sup>283</sup> 11 *Del. C.* § 273.

<sup>284</sup> *Delaware Criminal Code with Commentary* at 52 (1973).

<sup>285</sup> *Id.*

<sup>286</sup> 2012 WL 1530508 (Del. Apr. 30, 2012).

<sup>287</sup> *Id.* at \*1.

<sup>288</sup> *Id.*

stole things anyway. The Delaware Supreme Court found that Lee telling his accomplices they were at the wrong house did not exempt Lee from liability “because he did not terminate his complicity prior to commission of the offenses.”<sup>289</sup>

Unlike Lee, Mr. Henry terminated his complicity prior to the commission of the offense. Instead of going straight to the backyard, Mr. Henry stood in the parking lot doing nothing for short while. He then fired shots in the opposite direction of where Purnell was shooting Mr. Mumford. That completely deprived the enterprise of Mr. Henry’s complicity. Certainly, Purnell knew right where to go. Mr. Henry did not go there.

Mr. Henry did walk partway down the path to the back of Building 105, but did not go all the way back there and did not fire any further shots. The shooting was over by that point. The State argued two inferences from that evidence: first, that Mr. Henry did not fear the gunman, and second, that he did not fear the gunman because they were working together.<sup>290</sup> The first inference is reasonable in a light most favorable to the State. The second is not. There was no evidence presented to support that Mr. Henry was “working together” with Purnell at the

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<sup>289</sup> *Id.* at \*2.

<sup>290</sup> A145.

time Purnell killed Mr. Mumford. Inferences cannot be conjured from thin air; they must be supported by evidence.

The Superior Court held that Mr. Henry did not terminate his complicity, but even if he did, he did not do so prior to the commission of the offense as required.<sup>291</sup> But the “offense” here was the shooting of Corey Mumford, not driving to Wexford Village. The evidence demonstrates that if Mr. Henry was complicit as an accomplice upon leaving Gibson Avenue, he had deprived offense of his complicity by the time of his arrival at Wexford. The fact that Mr. Henry left in the car he arrived in does not prove complicity, contrary to the Superior Court’s finding.<sup>292</sup> The offenses were over by then. Being an accomplice means that the defendant in some way encouraged the principal to commit the crime before or during its commission. Driving away after the offense does not confer accomplice status on Mr. Henry.

The Superior Court also found that Mr. Henry walking partway towards the backyard of Building 105 while Latham-Purnell was shooting Mr. Mumford is evidence of his further complicity.<sup>293</sup> But doing so requires the invention of evidence, not proper inferences from it. There was no testimony at all about why Mr. Henry went partway towards the backyard. Jacobs surmised that Mr. Henry

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<sup>291</sup> *Henry* at \*5.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

did not fire more shots because he realized “who that was back there.”<sup>294</sup> Mr. Henry could have headed back there to stop the shooting or simply to see what was happening. Whatever the reason, he made no further steps toward where Latham-Purnell was firing shots.

The Superior Court erred in holding that Mr. Henry was an accomplice to the murderer, Latham-Purnell. But even if the Superior Court did not err on that point, it erred in finding that Mr. Henry did not deprive his complicity of its effectiveness before Latham-Purnell murdered Mr. Mumford.

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<sup>294</sup> *Id.*

## **CONCLUSION**

For the reasons stated, the Superior Court erred in denying Mr. Henry's Amended Motion for Postconviction Relief. This Court should vacate his convictions except for PFBPP.

**COLLINS PRICE WARNER  
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