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Case Number 519,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JHALIR HENRY,	§	
	§	No. 519, 2024
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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Date: June 20, 2025

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NATURE OF PROCEEDINGS

On June 26, 2023, a New Castle County grand jury indicted Jhalir Henry ("Henry") and two co-defendants, Dongrgus Holland ("Holland") and Shyheem Z. Latham-Purnell ("Latham-Purnell"), for Murder First-Degree, Possession of a Firearm During the Commission of a Felony ("PFDCF"), Possession of a Firearm by a Person Prohibited ("PFBPP"), and Conspiracy First-Degree. (A1 at D.I. 4; A73-76).[1] On October 18, 2023, the State moved to amend the indictment. (A3 at D.I. 13). The Superior Court granted the State's motion on the same day. (A3 at D.I. 14). The amended indictment charged Henry, Holland, and Latham-Purnell with Murder First-Degree, PFDCF, PFBPP, and Conspiracy First-Degree. (A78-80). The State filed the amended indictment without the grand jury pursuant to the granted motion. (A3 at D.I. 15).

On May 23, 2024, the PFBPP charges were severed into a "B" case, and on May 28, 2024, the State filed an amended indictment to reflect that the court had granted Henry's motion to sever. (A6 at D.I. 46, 48, 49; A95-96).

On May 30, 2024, Latham-Purnell accepted a plea agreement. (A85). Latham-Purnell pled guilty to Manslaughter and PFDCF.[2]

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[1] "D.I.___" refers to the Superior Court criminal docket item numbers in *State v. Jhalir Henry*, ID No. 2304008809A.

[2] *State v. Henry*, 2024 WL 3757156, at *1 n.1 (Del. Super. Ct. Aug. 12, 2024).

On June 10, 2024, the case proceeded to a jury trial with the selection of jurors, but on June 11, 2024, Henry and Holland waived their right to a jury trial and elected to have a bench trial. (A7 at D.I. 59; A130, A133, A137-44, A153, A186). On June 24, 2024, the Superior Court found Henry guilty on all charges.[3] (A15 at D.I. 10; A7-8 at D.I. 59, 64; A1277-83). On June 25, 2024, Henry moved for judgment of acquittal and for an enlargement of time to file a motion for acquittal. (A8 at D.I. 67, 68; A1038-42, A1044-49). The court granted Henry's motion for time to file a motion for judgment of acquittal and ordered that Henry file an amended motion. (A8 at D.I. 68, 69; A1043, A1050).

On July 10, 2024, Henry filed an amended motion for judgment of acquittal along with a supporting memorandum and appendix. (A9 at D.I. 74-76; A1051-1237). The State responded on July 29, 2024. (A9 at D.I. 77; A1238-67). Henry filed his reply on August 2, 2024. (A10 at D.I. 79; A1268-76). The Superior Court denied the motion on August 12, 2024.[4] (A10 at D.I. 81).

On November 22, 2024, the Superior Court sentenced Henry for Murder First-Degree to life in prison for the balance of his natural life with credit for 582 days previously served; for PFDCF to 25 years at Level V, suspended for 23 years at

[3] The Superior Court acquitted Holland of all charges. *Id.,* at *1.

[4] *Id.,* at *3-6..

Level V; for Conspiracy First-Degree to 15 months at Level V; and for PFBPP to 15 years at Level V. (Ex. A to Opening Br.).

Henry appealed his convictions and sentences. He filed an opening brief on May 19, 2025. This is the State's answering brief.

SUMMARY OF ARGUMENT

I. The Appellant's argument is denied. Viewing the evidence in a light most favorable to the State, the Superior Court properly denied Henry's motion for judgment of acquittal as to the Murder First-Degree charge because the evidence clearly established that Henry intended the death of another person. The court correctly concluded that the State did not have to prove the identity of the originally intended victim to find Henry guilty of Murder First-Degree. The State indicted Henry for, *inter alia*, Murder First-Degree, which requires that the person intentionally cause the death of another person. Sufficient evidence established that Henry and his fellow shooters were acting with the intent to shoot and kill another person when they murdered Mumford. Under Delaware law, an intent to kill can be inferred from several different factors. Here, viewing the evidence in the light most favorable to the State, the State presented the factfinder with sufficient evidence to conclude, beyond a reasonable doubt, that Henry acted with the intent to kill another person on the day that Mumford died based on his and his fellow shooters' purposeful and repeated discharge of firearms in the vicinity of people outside building 105 and the nine different gunshot wounds that Mumford suffered as a result.

In addition, the Superior Court correctly found that sufficient evidence existed for Henry's conviction of Murder First-Degree based on "transferred intent." The

Superior Court was allowed to find transferred intent following Henry's bench trial without the State having to specifically include this theory in its indictment. Delaware law does not require the State to affirmatively allege transferred intent or other theories of criminal liability in its charging document. The Superior Court also was permitted to utilize the theory of transferred intent without the State having to specifically request that the court apply this theory. Transferred intent did not constitute the only theory of criminal liability upon which Henry could have been convicted. And, the State did not even have to argue that transferred intent applied here because a trial court may find a defendant guilty of an offense based on more than one theory and need not specify the theory under which it found him guilty.

II. The Appellant's argument is denied. The Superior Court correctly denied Henry's motion for judgment of acquittal. Viewing the evidence in the light most favorable to the State, the State presented sufficient evidence for a rational factfinder to conclude that Henry was guilty of Murder First-Degree beyond a reasonable doubt under the theory of accomplice liability. The State presented testimony and other evidence that Henry and at least two other gunmen were acting in concert with one another with the same goal in mind. They traveled to Wexford Village Apartments in two cars driving back-to-back, arrived at building 105 at the same time, exited their cars and ran toward the building while firing shots, and then fled the complex together. The Superior Court correctly concluded that the facts

were more than sufficient to prove Henry was acting as part of a conspiracy to commit murder and that he aided in that effort. Henry's coordinated actions with at least two other shooters demonstrated his conduct qualified as an accomplice. Additionally, Henry did not terminate his complicity in the offense of Murder First-Degree before the commission of the crime, nor did he make any effort to prevent the crime as required by Delaware law. In fact, Henry's actions coordinated perfectly with the other shooters' actions. Finally, the evidence supports the "additional shots fired" language that the Superior Court used in its decision.

STATEMENT OF FACTS

On April 14, 2023, Corey Mumford ("Mumford"), an 18-year old high school senior, was shot and killed in his friend's backyard in the Wexford Village Apartment complex in Laurel, Delaware. (A171-72, A178, A194, A214-15).

Shortly before Mumford was shot and killed, a caravan of three cars (a black Mazda, a brown Audi, and a silver Volkswagen RT) drove in a row as they left the Hollybrook Apartments Complex located in Laurel, Delaware, at approximately 2:29 p.m. (A225, A706-07, A709-10; B-4-7, B-21-22, B-23). Henry regularly drove the black Mazda, although the car was owned by his girlfriend, Doniqua Upshur. (A704, A897-98; B-2). The brown Audi was registered to Tonya Romero, and the silver Volkswagen was rented by Gary Akins. (A707-08). Before the cars left Hollybrook, Henry got into the front passenger seat of the Mazda. (A886; B-17). The caravan of three cars proceeded to 111 Gibson Avenue, in Laurel, Delaware, which is the home of Gary Adkins.[5] (A527, A710-11). At 2:32:11 p.m., surveillance footage shows the same silver Volkswagen, brown Audi, and black Mazda driving in a row. (A709-10; B-8-10). The caravan arrived at Gibson Avenue at approximately 2:33 p.m. (A877; B-23).

[5] Gary Akins' nickname is Geezy. (A523).

Elijah Witherspoon ("Witherspoon") ran into Henry while Henry was sitting in a blue Mazda[6] outside of Gary Akins' apartment. (A525-27, A561, A563). Henry had a bandage on his hand from an IV when he spoke with Witherspoon. (A527). Witherspoon also saw Holland[7] that same day with a silver Volkswagen and later told police officers that Holland owned a silver or gray Volkswagen.[8] (A580-81). In reality, Gary Akins was the one who had been leasing a dark gray or silver Volkswagen. (A527, A561, A563, A663). Akins and Holland are cousins. (A900). Witherspoon later identified Henry and Holland during their criminal trial. (A540-41). Witherspoon has previously been convicted of felonies. (A542-43).

Meanwhile, Mumford, his cousin Larry Horsey, Junior, and a friend named Tyree Cornish ("Cornish") went through a hole in the fence between Seventh Street and the Wexford Village Apartments and were hanging out together outside. (A173, A351, A356-57, A361-64, A372-73, A507-08; B-28, B-29). At about the same time, Nakiya Jacobs ("Jacobs") drove her burgundy Cadillac to Wexford Village with passengers Kylee Robinson, Keishaun Copes, and Asautay Lofland and parked her car in front of building 105. (A285-86, A428-34). Jacobs and Robinson, who were

[6] The Mazda regularly driven by Henry is black. (A704).

[7] Holland's nicknames are Riggy and Smooth. (A581).

[8] Witherspoon later testified at trial that he did not remember telling police officers that the Volkswagen belonged to Holland—and claimed instead that he knew the car was Akins'. (A590).

friends with Horsey, had stopped there to discuss with Horsey and Mumford a trip to Ocean City for Jacobs' birthday. (A364-68, A424-27, A432-33). After Jacobs parked her vehicle, Robinson and Lofland went to the back of building 105 to talk with Horsey and Mumford. (A436). Then, Mumford and Javier White walked to the front of building 105 and spoke with Jacobs and Copes. (A426, A436-37). Afterwards, Jacobs, Robinson, Copes, and Lofland were once again sitting in Jacobs' parked car. (A438). That left Mumford and Horsey alone together behind building 105, although there were a few other unknown individuals nearby. (A368-69, A373, A421).

Soon thereafter, a newer model gray or silver Volkswagen Jetta and a black or gray Audi sedan,[9] both with tinted windows, drove into the Wexford Village Apartment complex and backed into parking spaces in the parking lot.[10] (A247-48, A253-54, A258-59, A262, A267, A284, A312-13, A390-92, A438-43, A458, A463, A478, A479-80, A522). The two cars pulled in perfectly together and parked next to each other. (A440). When the two cars parked, Copes exited from Jacobs' car and ran to the front of building 105. (A457-58). A few seconds later, two black men

[9] Later information revealed that Tonya Romera owns the brown Audi. (A899).

[10] Nakiya Jacobs was the only witness who told police that she saw a light blue G wagon, which is a type of SUV. (A247-48). Josee Lazarre testified that she lived in building 107, and she coincidentally owns a silver Volkswagen Jetta. (A309, A318-19).

exited the vehicles. (A443, A474). The first man exited from the front passenger seat of the gray car and was tall, thin, medium height, and wearing a mask, jeans, a white hoodie, and sneakers. (A284-49, A264, A375-77, A380-82, A384-86, A443-45, A481-82).[11] The second man, who was heavy-set and wearing a gray hoodie, blue and yellow shorts, and Nike Air Jordan sneakers, exited from the back seat of the other car holding a black gun in his hand.[12] (A248-49, A287, A290, A293, A396, A414, A444-46, A447-49, A461-62).

A few seconds after the men exited their cars, shots were fired. (A254-55, A282-83, A450). One of the men ran to the back of building 105. (A446, A450-51). The second male, wearing the gray hoodie, blue and yellow shorts, and no mask and carrying a black handgun, walked to the front of Jacobs' car. (A447-50). Jacobs identified this man as Henry.[13] (A249, A447, A460). Henry pointed the gun at Jacobs' car and shot it into the air in the direction of building 102.[14] (A450-51,

[11] Horsey testified that both men were wearing masks. (A375-77, A380-82, A384-86, A396). But, Jacobs said that only one man was wearing a mask and recognized the second man without a mask as Henry. (A447).

[12] Jacobs told one detective that Henry exited the Volkswagen, but then told a different detective that he exited from an Audi. (A463-65).

[13] On cross-examination Jacobs seemed to recant her identification (A466), but then reconfirmed her identification of Henry as one of the two men who went to the back of building when Mumford was killed. (A483-84).

[14] Jacobs clarified on cross-examination that Henry was standing on a sidewalk when he shot his gun into the air. (A469-70).

A458-59, A468-69). In the meantime, Horsey, who was still behind building 105 with Cornish and Mumford, heard someone (later revealed to be Copes, who had been in Jacobs' car) come around the side of building 105 saying that "Jha's spinning" or "Jha's coming."[15] (A369-70, A374-76, A422; B-29).[16] A few seconds later a black masked man wearing all black and carrying a black gun in his hand came around the corner and started shooting.[17] (A375-77, A380, A382, A413, A415, A418-19). Horsey turned and ran, but then tripped on a log. (A384-85). The gunshots continued. (A254-55, A258, A282, A289-90, A311, A384, A510). During the gunfire, Mumford was shot numerous times. (A783).

Witherspoon, who lived in the back apartment of building 105, heard the gunshots, opened the door to his apartment, and saw someone standing over Mumford's body. (A236, A279, A507, A510-11). After opening his door, two young men—Rakeem West and Cornish[18]—ran into Witherspoon's apartment. (A512-14, A551, A556). Henry walked to the back of building 105 and stopped at

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[15] "Spinning" refers to someone shooting. (A369). "Jha" is Henry's nickname. (A447).

[16] Tyree Cornish testified that he heard Keishaun Copes say, "Jhalir is coming." (A692-93; B-29).

[17] Horsey testified that two black masked men wearing all black came around the corner of building 105, but he also seemed to state that they came from different directions and not simultaneously. (A375-77, A380, A382-85, A413, A415, A418-19).

[18] Tyree Cornish denied running into Witherspoon's apartment. (A595).

the corner. (A452, A471-72, A482-83, A484). Horsey turned and ran, but then tripped on a log. (A384-85). The gunshots continued. (A254-55, A258, A282, A289-90, A311, A384, A510). Someone from building 103 returned gunfire.[19] (A521). Witherspoon exited his apartment and saw Henry holding a firearm in one of his hands and standing near Mumford. (A514-16).

The two men with guns ran from behind building 105 to the parking lot in front of building 105 while shooting towards building 105.[20] (A247-48, A256, A258-59, A264-65, A283, A286, A289-90, A292, A382, A452-53, A516-17). One of the men had a black gun with a clip piece on it. (A257, A383, A417). The other man also had a gun, but did not shoot once he reached the corner of building 105. (A387, A417-18, A472-73). Witherspoon identified Henry and Lathan-Purnell as the two men who ran from the back of building 105 where Mumford had been shot to the front of building 105 and into the parking lot. (A519, A521). Henry and Latham-Purnell jumped into the Volkswagen Jetta, and both the Volkswagen and

[19] Elijah Witherspoon testified to this fact, but would not identify the shooter from building 103. (A522).

[20] Tasha Bull testified that she saw a few men, but she told the police after the shooting that she had seen five or six men. (A264). Cristina Franco Perez testified that there were two men shooting. (A283). Nakiya Jacobs said that she saw two shooters. (A248). Horsey testified that he saw two men, but only one of them was shooting their gun. (A375-77, A380-82, A384-85, A387, A417).

the brown Audi drove out of Wexford Village very fast.[21] (A259, A262, A264, A284-85, A287-89, A291, A312, A314, A390-92, A409, A453-54, A522-23).

Horsey found Mumford lying on the ground with his eyes closed. (A393-94). Jacobs was by his side,[22] and Mumford was gasping for air. (A394, A454-56). Mumford also spit up some blood. (A517). Horsey ran back to his grandmother's house and told her to call 911. (A394-95). Then he returned to where Mumford was lying on the ground. (A395).

At 2:40 p.m., the police received a 911 call regarding shots fired. (A222). Officers from the Laurel Police Department arrived at the crime scene at 2:42 p.m. (A223). Corporal Ashley Little[23] exited her vehicle and saw Witherspoon, a man with whom she was familiar. (A237, 242). Corporal Little asked Witherspoon who had been shot. (A242; B-1). The officers performed CPR on Mumford, but he had no pulse and was not breathing. (A196-97). Mumford had nine gunshot wounds to his chest, his right leg, and his right elbow.[24] (A198).

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[21] Elijah Witherspoon testified that both Henry and Latham-Purcell got into the Volkswagen. (A522-23).

[22] Witherspoon testified that Jacobs was not by Mumford's side just after Mumford had been shot. (A554, A585).

[23] Corporal Little's last name is now Gardner. (A234-35).

[24] There is a conflict in the record about how many gunshot wounds Mumford suffered. The Chief Medical Examiner testified that Mumford had ten wounds in his body, but one of them was merely a graze gunshot wound to Mumford's back. (A783-84, A793-95).

While Corporal Little was rendering aid to Mumford, she asked Witherspoon if he had seen anyone, and Witherspoon said that he had not—that he had been inside his home. (A242, A544, A582; B-1). At 2:44 p.m., EMTs were dispatched to the crime scene and arrived there at 2:47 p.m. (A195). Corporal Little spoke with Jacobs outside of the ambulance. (A240, A245-46). EMTs provided care to Mumford and then drove him to Nanticoke Memorial Hospital.[25] (A199-200).

When Corporal Little asked the bystanders if anyone had seen anything, Witherspoon responded, "I don't know. I don't know." (A242, A544; B-1). Later, Corporal Little told Witherspoon that if he heard anything, she would keep his name out of the record. (A243, A545-46). Corporal Little gave the vehicle and shooter descriptions that she received from witnesses to SUSCOM (the dispatch center) and then issued a BOLO for a black Mazda with dark tinted windows. (A221, A249, A702).

After hospital staff performed trauma care to Mumford, a doctor pronounced him dead at 3:44 p.m. (A204-10). Mumford suffered nine gunshot wounds,[26] one of which was almost immediately fatal, and two of which were potentially fatal. (A783-84, A785-803). Three projectiles were recovered from Mumford's body.

[25] Nanticoke Memorial Hospital is now TidalHealth Nanticoke. (A200).

[26] One of these wounds was a graze gunshot wound. (A794).

(A824). Chief Medical Examiner Dr. Gary Collins opined that Mumford's cause of death was multiple gunshot wounds, and his manner of death was homicide. (A803).

Police officers secured the scene and began collecting evidence. (A272). In total, officers collected 22 casings and four projectiles from the scene. (A730-31, A815-21). Officers found three groupings of casings: eight 9-millimeter casings from the backyard of building 105, six .40 caliber casings from the North side of building 105 near the air conditioner, and eight .40 caliber casings from the parking lot in front of building 105. (A751-52, A815-17, A821-22, A848-49, A850-51). In addition, four projectiles were recovered: three from Mumford's right knee, right wrist, and lower left abdomen and one from a nearby apartment building. (A733, A786-88, A799, A821). The projectiles recovered from Mumford's body were consistent with bullets from a 9-millimeter Luger handgun. (A733, A752-53).

Based on a study of the casings collected, there were three separate handguns involved in the shooting on April 14, 2023. (A731, A737, A747-48, A751-52). The three types of guns likely involved were a 9-millimeter Luger handgun and two different .40 caliber handguns. (A731-33, A734, A737, A739-40).

Later at about 4:25 p.m., behind building 105, Witherspoon gave Sergeant Bauer three names: Henry, Latham-Purcell, and Holland. (A547-48, A583, A588). Witherspoon testified at trial that he had seen Henry and Latham-Purcell fleeing the scene after Mumford had been shot and killed. (A529, A531, A538, A546-48).

Witherspoon also testified that he told Sergeant Bauer that Holland had been present at the time of the shooting based on what others had told him. (A531, A546-48, A583, A589). He further testified that he was intoxicated when he spoke with Sergeant Bauer. (A530, A547-48, A550, A588).

On April 14, 2023, Witherspoon went to the Laurel Police Department and had an interview with Sergeant Bauer and Detective Bluto. (A531). Witherspoon told the police officers that after he heard shooting, he opened his door and saw Henry, Latham-Purcell, and Holland standing over Mumford's body while holding guns, and wearing all black clothing and masks. (A551-52, A583-84). However, during the trial, Witherspoon said that he did not see all three men standing outside by Mumford or running away. (A553-54).

On the evening of April 14, 2023, Officer Lieber pulled over a black Mazda for speeding. (A702-04; B-2-3). Officer Lieber identified this black Mazda as the same car that was located at Hollybrook Apartments on April 14, 2023, at 2:18:51 p.m. (A703-04, A706; B-2).

On April 21, 2024, officers arrested Henry. (A891, A901). That same day, police officers executed warrants at 30926 Johnson Road in Salisbury, Maryland for a search of the residence, of Henry, and of a black 2020 Mazda. (A831-32, A859, A861-62, A890-91). Henry's Maryland probation address is the same address in Salisbury, Maryland. (A980). The police found a gray sweatshirt in the black

Mazda. (A831-33, A855-56, A870). On May 10, 2023, the police executed a search warrant on a silver 2021 Volkswagen Arteon and found a black ski mask in the front passenger side of the car. (A835, A838, A866).

On May 18, 2023, officers arrested Holland pursuant to a warrant. (A902, A980).

On May 19, 2023, Cornish told Detective William Saylor during an interview that he had been at Wexford Village Apartments on the day that Mumford was killed, that Henry was shooting into the ground, and that someone else had killed Mumford. (A645, A668-71). The next day, Detective Bluto interviewed Cornish, and Cornish told him that there were three shooters present and that as soon as he heard the shots, he took off running around the apartment complex. (A669). Cornish also told Bluto that there were four shooters present, that they were wearing all black, and that as soon as Cornish heard the shots, he ran off into a field. (A677-79).

On June 1, 2023, Detective Bluto again interviewed Cornish about the shooting. (A630, A633). Cornish told the detective that Henry was "shooting to kill" and someone else was shooting bullets into the ground. (A645).

On June 5, 2023, Cornish contacted Detective Bluto through his grandmother and told the detective that he wanted to give more information. (A680). The next day, Detective Bluto again interviewed Cornish, and Cornish told him that Latham-

Purnell had been wearing all black on the day of the killing. (A684). Cornish also told the detective that he wanted some help with his charges. (A682).

On June 12, 2023, officers arrested Latham-Purnell. (A902, A909).

On approximately September 26, 2023, Witherspoon also had another interview with Detective Bluto at the Laurel Police Department. (A531-32; B-27). In that interview, Witherspoon told police officers that he saw the cars arrive at Wexford Villages and saw Henry, Latham-Purcell, and Holland all standing over Mumford's body right after the shooting. (A557, A584). But then during the trial, he testified that he saw Henry without a mask standing over Mumford's body, he saw Latham-Purcell fleeing towards the cars, and he did not see Holland. (A557-58, A579, A585-86).

At Henry's trial, Cornish testified that he had been convicted in 2024 of Reckless Endangering First-Degree and Possession of a Firearm During the Commission of a Felony. (A664). Cornish also stated that although he had entered into a plea agreement with the State and received a sentence of three years of incarceration with twenty-five years of "back-up" time, he did not receive anything in exchange for his testimony in Henry's trial. (A664, A687-91, A695-96). Cornish also testified that what he told Detective Bluto was all rumor and hearsay. (A685-86, A691-93).

ARGUMENT

I. THE SUPERIOR COURT PROPERLY DENIED HENRY'S MOTION FOR JUDGMENT OF ACQUITTAL AS TO THE MURDER FIRST-DEGREE CHARGE BECAUSE THE EVIDENCE CLEARLY ESTABLISHED THAT HENRY INTENDED TO CAUSE THE DEATH OF ANOTHER PERSON.

Question Presented

Whether the State presented sufficient evidence that Henry intended to cause the death of another person, when viewed in the light most favorable to the State, for any rational trier of fact to find Henry guilty of Murder First-Degree beyond a reasonable doubt. The State preserved this argument in its response to Henry's amended motion for judgment of acquittal. (A9 at D.I. 77).

Standard and Scope of Review

This Court reviews a trial court's decision on a motion for judgment of acquittal *de novo*, specifically deciding "whether any rational trier of fact, viewing the evidence and all the reasonable inferences to be drawn therefrom in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of the crime."[27] Deference is given to the "trier of fact's

[27] *McGuiness v. State*, 312 A.3d 1156, 1187 (Del. 2024); *Hopkins v. State*, 293 A.3d 145, 150 (Del. 2023); *Morgan v. State*, 922 A.2d 395, 400 (Del. 2007). *See also Stevenson v. State*, 2018 WL 1136524, at *2 (Del. Mar. 1, 2018) (sufficiency of evidence); *Wright v. State*, 25 A.3d 747, 751 (Del. 2011) (sufficiency of evidence); *Williams v. State*, 539 A.2d 164, 168 (Del. 1988).

factual findings, resolution of witness credibility, and drawing of inferences from proven facts."[28] In making this inquiry, this Court does not distinguish between direct and circumstantial evidence.[29]

Merits of Argument

After the verdict, Henry moved for judgment of acquittal on the Murder First-Degree charge. (A917, A1044-49, A1051-1237). Henry argued that he should be acquitted because the State failed to prove intent for Murder First-Degree, failed to present any evidence of who Henry and his co-defendant intended to kill, so transferred intent did not apply, and failed to prove that he was an accomplice to the actual shooter. In addition, Henry argued that he terminated his complicity before the commission of the murder. The Superior Court rejected Henry's arguments and found that he was guilty of Murder First-Degree.[30]

On appeal, Henry maintains that although his indictment alleged that he intentionally caused the death of Mumford, the State failed to prove that he intended to kill Mumford. Opening Br. 37-38. Henry disagrees with the Superior Court's holding that the plain language of the intentional murder statute requires that the

[29] *Robinson v. State*, 953 A.2d 169, 173 (Del. 2008).

[30] *Henry*, 2024 WL 3757156.

element of intent be directly linked to the concept of causing another person's death—not to the identity of the person who died. Opening Br. at 38. Instead, Henry argues that the element of intent is directly linked to the identity of the person who died and that intent to kill a specific person must be proven before the intent can transfer. Opening Br. at 38, 40. Without citing any supporting law, Henry asserts that when the State's theory of liability is transferred intent, it must indict the case that way. Opening Br. 41. Henry complains that although the State did not charge Henry via a theory of transferred intent in the indictment, the Superior Court decided that transferred intent applied here. Opening Br. at 41. Additionally, Henry finds fault in the Superior Court's decision to deny his motion for judgment of acquittal because he notes that the State never asked the judge to instruct himself on transferred intent and the State did not prove all of the elements of the charge of Murder First-Degree in the indictment. Opening Br. at 41-42. Henry's claims fail.

A. The Superior Court Correctly Concluded That the Identity of the Originally Intended Victim is Irrelevant to Finding that Henry Intentionally Killed Mumford.

The Superior Court correctly concluded that the State did not have to prove the identity of the originally intended victim for any rational factfinder to find Henry guilty of Murder First-Degree.[31] The State indicted Henry for, *inter alia*, Murder

[31] *Id.*, at *3.

First-Degree under 11 *Del. C.* § 636(a)(1).[32] Section 636(a)(1) requires that the person "intentionally causes the death of another person…." Intent, in turn, is defined as "the person's conscious object to engage in conduct of that nature or to cause the result."[33] Under the plain language of the statute, the element of intent is directly linked to the concept of causing another person's death, not the identity of the person who died. Here, the Superior Court correctly concluded that the evidence proved "the nature of [Henry's] conduct was to shoot and kill another person, and the evidence established that he caused such a result."[34] The court reasoned that the elements of Murder First-Degree do not require the State to identify the victim or to establish that the victim was the defendant's specific target.[35] Moreover, as the court noted, an offender can be convicted of Murder First-Degree based on "transferred

[32] 11 *Del. C.* § 636(a)(1) provides that "[a] person is guilty of murder in the first degree when . . . [t]he person intentionally causes the death of another person."

[33] 11 *Del. C.* § 231(b)(1).

[34] *Henry*, 2024 WL 37757156, at *3.

[35] *Id.*

intent"[36] because "a defendant's culpability for a crime does not change simply because he ended up harming someone different than expected."[37]

B. When Viewed in the Light Most Favorable to the State, the Evidence Was Sufficient for a Rational Factfinder to Conclude That Henry Intentionally Caused the Death of Another Person as Set Forth in 11 *Del. C.* § 636(a)(1).

When viewed in the light most favorable to the State, the evidence at trial was sufficient for a rational factfinder to conclude that Henry and the other gunmen were acting with the intent to kill on the day when they murdered Mumford.[38] Intent must usually be inferred from the actions of the perpetrator.[39] Under Delaware law, an intent to kill can be inferred from a number of different factors, such as the use of a deadly weapon, the manner in which it was employed, the type of wound inflicted, and the events leading up to and immediately following the victim's death.[40]

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[36] *Id.*; 11 *Del. C.* § 262(1).

[37] *Henry*, 2024 WL 37757156, at *3; *Robinson v. State*, 1992 WL 426439, at *1 (Del. Dec. 24, 1992); *State v. Gardner*, 203 A.2d 77, 81 (Del. 1964) ("It is not necessary that this state of mind should be directed against a particular person, for if A makes up his mind to kill B, and while trying to carry out his intention kills C who is standing by, express malice exists . . . . In such a case A cannot show that he intended to kill B, because it is the intent to kill, not to kill the person aimed at, that constitutes the malice.").

[38] *Henry*, 2024 WL 377757156, at *4.

[39] *Benson v. State*, 105 A.3d 979, 983 (Del. 2014) (citing *Brown v. State*, 233 A.2d 445, 447 (Del. 1967)).

[40] *Conyers v. State*, 396 A.2d 157, 160 (Del. 1978) (citing *Bantum v. State*, 85 A.2d 741, 751 (Del. 1952); *Powell v. State*, 86 A.2d 371, 374 (Del. 1952); *Hallowell v. State*, 298 A.2d 330 (Del. 1972)); *Benson*, 105 A.3d at 983-84 (citing *State v. Diaz*,

Here, the ballistics and autopsy findings, surveillance footage, and witness testimony demonstrated Henry's and the other shooters' intent to kill. Henry and his co-conspirators arrived at the same time at the Wexford Village Apartments, backed their cars into parking spaces to allow for an easier getaway, and exited the vehicles at the same time. (A259, A262, A267, A284, A312-14, A390-92, A438-41, A463-64, A478-80, A522). In fact, one witness testified that the cars pulled in perfectly together. (A440). Henry and the other shooters ran towards building 105 and started firing their guns while standing in different positions around building 105 in Wexford Village Apartments. (A282-83, A286, A290, A380-81, A383-85, A387, A417-18, A449-53, A458-59, A510, A515, A519, A848-51). Officers found three groupings of casings: eight 9-millimeter casings from the backyard of building 105, six .40 caliber casings from the North side of building 105, and eight .40 caliber casings from the parking lot in front of building 105. (A751-52, A815-17, A821-22, A848-51). One witness testified that two men with guns ran from behind building 105 to the parking lot in front of building 105 while shooting towards building 105. (A256, A258). Henry and the other shooters used three different guns and fired at least 22 rounds from multiple locations. (A730-31, A737, A747-48,

679 A.2d 902, 916 (Conn. 1996); *State v. Ragueseo*, 622 A.2d 519, 523-24 (Conn. 1993); *State v. Rokus*, 483 N.W.2d 149, 154-55 (Neb. 1992); *Williams v. State*, 804 S.W.2d 346, 347-48 (Ark. 1986); *Parker v. State*, 717 S.W.2d 793, 798 (Tex. Ct. App. 1983)).

A751-52, A815-21). One shooter inflicted nine different gunshot wounds in Mumford.[41] (A733, A752-53, A783). Henry and the other shooters were still shooting when they ran back to their vehicles at the same time and fled the scene together. (A264, A287-90, A311-14, A452-54, A522-23). This evidence demonstrates that either Henry, his co-conspirators, or both fired nine shots into Mumford's body and that Mumford died as a result. Thus, when reviewing the evidence in a light most favorable to the State, there was sufficient evidence for the factfinder to conclude, beyond a reasonable doubt, that Henry and his co-conspirators intentionally killed Mumford.[42]

C. The Superior Court Did Not Err By Applying The Theory of Transferred Intent Without the State Having to List This Theory In the Indictment and Without the State Having to Request an Instruction on This Type of Criminal Responsibility.

The Superior Court properly applied transferred intent without the State having to list this theory in its indictment. Nothing requires the State to affirmatively allege transferred intent or other theories of criminal liability in its charging document because such intent is not an affirmative element of the offense. Rather, transferred intent forms the basis for a legal argument related to the element of intent. The same holds true for the identity of the intended victim and legal theories of

[41] One of these wounds was a graze gunshot wound. (A794).

[42] *Henry*, 2024 WL 377757156, at *4.

accomplice liability—neither are an element of the crime of Murder First-Degree, so the State does not have to allege the name of the original victim or the State's legal theory in its charging document. Although no Delaware cases have addressed this issue, other state courts have held that a state is not required to plead transferred intent in an indictment for a jury trial.[43]

The Superior Court also did not err by utilizing the theory of transferred intent without the State requesting that the court apply this theory of criminal liability. Under Delaware law, the State may pursue multiple or alternative theories of guilt at the same time.[44] Transferred intent did not constitute the only theory of criminal

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[43] *Matter of K.W.G.*, 953 S.W.2d 483, 488 (Tex. App. 1997) (holding that the state was not required to plead transferred intent in a criminal case); *Garcia v. State*, 791 S.W.2d 279, 280-81 (Tex. App. 1990) (holding that a charge on transferred intent can be proper even though the indictment did not specify that theory); *People v. Franklin*, 588 N.E.2d 398 (Ill. App. Ct. 1992) (holding the concept of transferred intent may properly be presented to the jury without alleging it in the charging instrument); *People v. Hill*, 658 N.E.2d 1294, 1300 (Ill. App. Ct. 1995) (same); *State v. Bakdash*, 830 N.W.2d 906 (Minn. App. 2013) (finding murder indictment was not constructively amended when the state advanced transferred intent as a theory at trial).

[44] *See, e.g., Banther v. State*, 977 A.2d 870, 886 (Del. 2009) ("It is well established that a defendant who is indicted as a principal can be convicted as an accomplice and vice versa, if the evidence presented at trial supports the alternative *basis for criminal liability."); Probst v. State*, 547 A.2d 114, 123 (Del. 1988) ("In a criminal charge involving one incident and two people, the jury is regarded as being unanimous if, without specifically identifying who was the principal and who was the accomplice, they all agree that one of the two actors performed all of the elements of the offense charged as a principal and that both actors knowingly participated in the alleged criminal act."). *See also* 11 *Del. C.* § 275.

liability upon which Henry could have been convicted. Rather, transferred intent encompassed only one of the possibilities that arose based upon the evidence that the State introduced at the trial. Moreover, the State did not even have to argue that transferred intent applied here because a trial court may find a defendant guilty of an offense based on more than one theory and need not specify the theory under which it found him guilty.[45] And, because judges have legal training and knowledge about different theories of criminal liability, the State does not have to instruct a judge in a bench trial on the particular legal theory upon which it is relying.[46]

Here, the State advanced the theory of transferred intent under 11 *Del. C.* § 262 by rebutting the argument that it was required as a matter of law to prove the identity of the intended victim. Under transferred intent, it was irrelevant whether Mumford was the original target because the evidence demonstrated that Henry and

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[45] *People v. Alexander*, 546 N.E.2d 1032, 1035 (Ill. App. Ct. 1989); *People v. Hudson*, 519 N.E.2d 28, 32 (Ill. App. Ct. 1988). *See also State v. Rieker*, 14 N.W.3d 855, 871 (Neb. 2025) (finding it is presumed in a criminal bench trial that the judge is familiar with and applied the proper rules of law unless it clearly appears otherwise). Detailed legal conclusions are appropriate in non-jury criminal proceedings, especially when the facts of a case suggest several legal principles which the trial judge might have invoked. *United States v. Livingston*, 459 F.2d 797, 798 (3d Cir. 1972); *cf.* Canon 19, The Canons of Judicial Ethics of the American Bar Association.

[46] *Cf. Central Mortg. Co. v. Morgan Stanley Mortg. Cap. Holdings LLC*, 27 A.3d 531, 537 (Del. 2011) (recognizing that when ruling on a motion to dismiss, this Court invites judges to determine whether a complaint states a plausible claim for relief and "draw on . . . judicial experience and common sense").

the other shooters intentionally caused Mumford's death. When viewed in the light most favorable to the State, there was sufficient evidence presented for the trial judge, acting as the factfinder, to find, beyond a reasonable doubt, that Henry intended to kill Mumford, including evidence of the three shooters' purposeful and repeated discharge of firearms in the vicinity of building 105 and the nine different gunshot wounds that Mumford suffered as a result.[47] Henry's intent to kill transferred to Mumford when he and the other shooters fired nine gunshots into Mumford's body and fatally wounded him.[48]

[47] *Henry*, 2024 WL 3757156, at *4.

[48] *Id.*

II. THE SUPERIOR COURT PROPERLY DENIED HENRY'S MOTION FOR JUDGMENT OF ACQUITTAL BECAUSE THE EVIDENCE CLEARLY ESTABLISHED THAT HENRY WAS LIABLE AS AN ACCOMPLICE TO THE SHOOTER AND THAT HE DID NOT TERMINATE HIS COMPLICITY IN THE MURDER.

Question Presented

Whether the State presented sufficient evidence, when viewed in the light most favorable to the State, for any rational trier of fact to find Henry criminally liable as an accomplice to the shooter (Latham-Purcell) and to find that he did not terminate his complicity in Mumford's murder. The State reserved this argument in its response to Henry's amended motion for judgment of acquittal. (A9 at D.I. 77).

Scope of Review

This Court reviews a trial court's decision on a motion for judgment of acquittal *de novo*, specifically deciding "whether any rational trier of fact, viewing the evidence and all the reasonable inferences to be drawn therefrom in the light most favorable to the State, could find the defendant guilty beyond a reasonable doubt of all the elements of the crime."[49] Deference is given to the "trier of fact's factual findings, resolution of witness credibility, and drawing of inferences from

[49] *McGuiness*, 312 A.3d at 1187; *Hopkins*, 293 A.3d at 150; *Morgan*, 922 A.2d at 400. *See also Stevenson*, 2018 WL 1136524, at *2 (sufficiency of evidence); *Wright*, 25 A.3d at 751 (sufficiency of evidence) *Williams*, 539 A.2d at 168.

proven facts."[50] In making this inquiry, this Court does not distinguish between direct and circumstantial evidence.[51]

Merits of Argument

Henry argues that the Superior Court erroneously found he went to the back of building 105, "where additional shots were fired." Opening Br. at 43.[52] He contends that Jacobs' testimony and the ballistic evidence support the conclusion that after firing shots in the parking lot in front of building 105, he did not fire any more shots. Opening Br. at 44. Henry alleges that the State failed to prove he was an accomplice to Latham-Purnell because it did not present evidence of the defendants' plan, discussions, or common purpose or evidence that Henry encouraged Latham-Purnell in any way. Opening Br. at 44-45. In addition, Henry asserts that he terminated his complicity prior to the commission of the offense and finds fault with the Superior Court reaching its contrary conclusion. Opening Br. at 47-49. Henry's claims are unavailing.

A. The Record Supports the Superior Court's Factual Findings.

Viewing the evidence in the light most favorable to the State, the Superior Court did not err in finding that Henry went to the back of building 105 "where

[50] *Morgan v. State*, 922 A.2d 395, 400 (Del. 2007).

[51] *Robinson v. State*, 953 A.2d 169, 173 (Del. 2008).

[52] Citing *Henry*, 2024 WL 3757156, at *2.

additional shots were fired." Although one witness (Jacobs) testified that Henry did not walk all the way to the back of building 105 and the ballistics evidence demonstrates that the officers located only nine-millimeter casings at the back of building 105, nevertheless, the evidence supports the court's findings when viewed in the light most favorable to the State. Witherspoon testified that he resided in the back apartment of building 105 at Wexford Village, he heard gunshots in the afternoon on April 14, 2023, he stepped out his door, and he saw Henry holding a gun while standing over Mumford. (A507-11, A514-16, A585). Witherspoon then saw Henry run from the back of building 105 to the parking lot in front. (A521). Later, Witherspoon told officers that he saw Henry, Holland, and Latham-Purnell holding firearms and standing over Mumford's body. (A583-84). Although Witherspoon recanted his statements on the stand (A553-54, A558), it is the sole province of the factfinder to determine witness credibility, resolve conflicts in testimony, and draw any inferences from the proven facts.[53] Here, a reasonable factfinder, viewing the evidence in the light most favorable to the State, could have believed that Witherspoon's initial testimony and his later interviews with the police and found that Henry went to the back of building 105.

[53] *State v. Pittaway*, 2017 WL 5624302, at *2 (Del. Super. Ct. Nov. 2, 2017).

In addition, viewing the evidence in the light most favorable to the State, a reasonable factfinder could have found that there were "additional shots fired." Tasha Bull testified that after she saw a silver or gray car enter Wexford Village Apartments, she heard gunshots, looked out her window, and saw five or six men who were wearing black and shooting guns while running backwards from building 105 towards the parking lot in front of building 105.[54] (A254-56, A258, A264). Cristina Perez testified that she saw two black men—one of whom was wearing a gray hoodie—standing close to one another near a gray car while shooting guns. (A282-83, A286-87, A290, A292-93). Jacobs testified that she saw two men exit the cars that parked perfectly together, and one of the men was Henry. (A443-44, A447). She testified that Henry walked to the corner of the back of building 105, then she heard additional gunshots and saw someone run from the other side of building 105 (A452-53). In his May 19, 2023 interview, Corning said there were three shooters, one of whom was Henry. (B-28). Corning stated that the men arrived in three cars "back, to back, to back." (B-28). The three cars were a silver Volkswagen, a black Chrysler, and a gray or burgundy Audi. (B-28). Henry was

[54] Tasha Bull testified that she saw a few men, but she told the police after the shooting that she had seen five or six men. (A264). Horsey testified that he saw two men, but only one of them was shooting their gun. (A375-77, A380-82, A384-85, A387, A417).

wearing shorts and was shooting into the ground. (B-28). All of these witnesses' testimonies supported the Superior Court's findings.

B. Viewing the Evidence in the Light Most Favorable to the State, There was Sufficient Evidence for the Factfinder to Conclude That Henry Acted as an Accomplice of Latham-Purnell.

Regardless of whether Henry walked all the way to the rear of building 105 or was one of the men who fired his gun while at the back of building 105, viewing the evidence in the light most favorable to the State, there was still sufficient evidence for a reasonable factfinder to conclude beyond a reasonable doubt that Henry "was acting as part of a conspiracy to commit murder and that he aided in that effort."[55] "An individual is liable for the conduct of another when '[i]ntending to promote or facilitate the commission of the offense the person . . . [a]ids, counsels or agrees or attempts to aid the other person in planning or committing [the offense].'"[56] "To be liable as an accomplice, it must affirmatively appear that the defendant in some way actively encouraged the principal to commit the crime; mere

[55] *Henry*, 2024 WL 3757156, at *4.

[56] 11 *Del. C.* § 271(2)b; *Clay v. State*, 164 A.3d 907, 914 (Del. 2017); *Harper v. State*, 121 A.3d 24, 29–30 (Del. 2015); *Brooks v. State*, 40 A.3d 346, 350 n. 14 (Del. 2012) (finding that an accomplice "is guilty of an offense committed by another person when intending to promote or facilitate the commission of the offense the accomplice aids or attempts to aid the other person in committing it") (quoting *Erskine v. State*, 4 A.3d 391, 394 (Del. 2010) (citing 11 *Del. C.* § 271(b))).

presence at the scene of the crime is not sufficient."[57] In addition, "a simple word or gesture" may be sufficient to constitute encouragement, but the conduct must occur before or during the commission of the crime by the principal.[58]

Here, viewed in the light most favorable to the State, the testimony and other evidence at trial provided sufficient evidence for a rational factfinder to find that "[Henry] acted as an accomplice in the death of Mumford."[59] In fact, Henry's participation in the killing of Mumford was more substantial than a word or gesture. Henry traveled with at least two other men to the crime scene at Wexford Village Apartments, carried a gun as the others did, exited the car along with his cohorts, ran toward building 105 while firing shots from his gun, and went to the back of building 105 before he and the other shooters fled Wexford Villages together. (A254, A256-59, A262, A264, A286-90, A313-14, A390-92, A444-47, A449-54, A522-23). Even if Henry did not personally shoot Mumford, he did not have to be at the shooter's side to encourage the killing of Mumford and to be guilty of acting as an accomplice.[60]

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[57] *Dalton v. State*, 252 A.2d 104, 105 (Del. 1969).

[58] *Id.*; *Turner v. State*, 137 A.2d 395, 398 (Del. 1958); *State v. Winsett*, 205 A.2d 510, 519 (Del. 1964).

[59] *Henry*, 2024 WL 3757156, at *5.

[60] *Salcedo v. Commonwealth*, 712 S.E.2d 8, 13 (Va. Ct. App. 2011); *Thomas v. Commonwealth*, 688 S.E.2d 220, 234 (Va. 2010).

Additionally, viewed in the light most favorable to the State, there was sufficient evidence for a rational factfinder to find beyond a reasonable doubt that Henry and his cohorts formulated a plan prior to going to Wexford Village Apartments and were working together to accomplish the killing of Mumford. Based on Witherspoon's testimony and the surveillance videos, Henry was present at the Hollybrook Apartments before the murder along with the other individuals who participated in Mumford's killing. (A525-27, A561, A563; B-12-22, B-23). The car that Henry was sitting in at that time acted as part of a caravan of three vehicles that departed from Hollybrook Apartments and drove to 111 Gibson Avenue. (B-4, B-8, B-11). Then Henry switched vehicles and entered a gray Volkswagen that continued to Wexford Village Apartments with at least two other men in a caravan of two to three cars. (A439, A442-47; B-28).

Based on other testimony, once Henry and the other shooters arrived at Wexford Village Apartments together, he and at least two other individuals exited the vehicles at approximately the same time.[61] (A444, A474). Henry fired shots in the parking lot near Jacobs' car while one shooter fired shots at Mumford and another fired shots on the other side of building 105. (A375-77, A380-82, A413,

[61] Jacobs saw only two men exit the vehicles, but other witnesses testified that more than two men came in the cars, and the ballistics showed that at least three guns were fired from three different locations. (A751-52, A815-17, A821-22, A848-49, A850-51).

A415, A418-19, A450-51, A458-59, A468-69). Henry walked to the backyard or corner of building 105. (A452, A471-72, A482-83, A484). Then Henry and the other two men ran from building 105 while shooting and headed to the two cars that had arrived at the same time. (A247-48, A256, A258-59, A264-65, A283, A286, A289-90, A292, A382, A452-53, A516-17). Henry and his cohorts got into the cars and fled together from Wexford Village Apartments in a hurry. (A259, A262, A264, A284-85, A287-89, A291, A312, A314, A390-92, A409, A453-54, A522-23).

And, based on the ballistics evidence, Henry and the other men were working in concert. Henry and his cohorts employed at least three different guns with three different sets of casings as they fired shots in three different locations around building 105. (A731-34, A737, A739-40, A747-48, A751-52, A815-17, A821-22, A848-49, A850-51).

"A person who is present, actually or constructively, at the scene of a crime encouraging or inciting the same by words, gestures, looks or signs, or who in any way or by any means countenances or approves the same is, in law, guilty of aiding and abetting the crime and is liable as principal."[62] Here, Henry was not only present with the other men who acted together to kill Mumford, but he also encouraged the murder by standing on one side of building 105 and shooting his gun while one other

[62] *Turner*, 137 A.2d at 398; *Brown v. Commonwealth*, 107 S.E. 809, 810 (Va. 1921); *Foster v. Commonwealth*, 18 S.E.2d 314, 316 (Va. Ct. App. 1942).

man shot Mumford and another man fired his gun on the other side of building 105. His presence at the crime scene, along with the coordinated timing of his travel—both the arrival and departure of Henry and his cohorts at the same time in cars driving in a row to and from the crime scene—support the conclusion that Henry acted as an accomplice to the shooter.[63] Thus, viewing the testimony, surveillance videos, photographs, and ballistics, in the light most favorable to the State, a rational trier of fact could conclude beyond a reasonable doubt that Henry was guilty of Murder First-Degree as an accomplice.[64]

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[63] *State v. Foster*, 656 S.E. 2d 74, 81 (W.V. 2007) (finding as sufficient evidence that defendant acted in concert with the principals who shot and killed victim, that defendant was present at the time and place of the crime, drove his own vehicle to the crime scene, permitted the principals to travel with him to the crime scene with the knowledge that one had a gun in his possession, was a good friend of one principal, and had a fight with one of the victims the same day as the crimes). *See Pugliese v. Commonwealth*, 428 S.E.2d 16, 25 (Va. Ct. App. 1993) (finding that Defendant's presence at the commission of the crime without disapproving or opposing it is evidence which, in connection with other circumstances, the trier of fact may consider in determining whether the defendant is an aider and abettor) (quoting *Foster*, 18 S.E.2d at 316 (cleaned up)).

[64] *Clay*, 164 A.3d at 914. *See State v. Mullins*, 456 S.E.2d 42, 46 (W. Va. 1995) (holding that substantial physical participation by a person charged as an aider and abettor in a criminal undertaking constitutes evidence from which a jury may properly infer an intent to assist the principal criminal actor); *State v. Watson*, 716 S.W.2d 398, 400–01 (Mo. Ct. App. 1986) ("Proof of any form of participation by defendant in the crime is enough to support a conviction and his presence at the scene, his companionship and conduct before and after the offense are circumstances from which one's participation in the crime may be inferred."); *State v. Gonzalez-Gongora*, 673 S.W.2d 811, 813 (Mo. App. 1984).

C. Henry Did Not Terminate His Complicity in the Offense of Murder First-Degree.

Henry did not terminate his complicity in the offense of Murder First-Degree before the commission of the crime, nor did he make any effort to prevent the crime. Section 273(3)(b) of Title 11 provides, in pertinent part, that an accomplice will not be held liable if the accomplice terminates complicity "prior to the commission of the offense and . . . makes a proper effort to prevent the commission of the offense."[65] A defendant has the burden to establish individual withdrawal regardless of when the purported withdrawal took place.[66]

Here, viewing the evidence in the light most favorable to the State, there was sufficient evidence for a rational trier of fact to find beyond a reasonable doubt that Henry, as shown by his actions, did not terminate his participation in the conspiracy prior to the murder of Mumford. In fact, his actions coordinated perfectly with the other shooters' actions. Henry met with the other shooters before driving together to the scene of the crime. (A524-26; B-12-20, B-23). The car in which Henry rode drove "back to back" with the other car or cars carrying the other shooters. (B-4, B-8, B-11, B-28, B-23). Then Henry got into a gray Volkswagen that continued to Wexford Village Apartments with at least two other men in a caravan of two cars.

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[65] 11 *Del. C.* § 273(3)(b); *Lee v. State*, 2012 WL 1530508, at *2 (Del. Apr. 30, 2012).
[66] *Smith v. United States*, 568 U.S. 106, 110 (2013).

(A439, A440-45, A447; B-24-26, B-28). Henry and the other shooters took guns with them. (A256-57, A375-77, A383, A387, A413-15, A419, A447, A449-53, A731, A734-37, A747-48, A751-52). When the shooters arrived at Wexford Village Apartments, they backed their cars into parking spots, then exited the cars at almost the same time. (A259, A262, A284, A312-13, A438-43, A458, A463-64, A478-80, A522). Henry may have stood in the parking lot in front of building 105 while another shooter killed Mumford, but his actions were coordinated with the other shooters. Henry's actions began and ended just as the other shooters entered the complex and exited the complex. Henry walked to the back of building 105 (either at the corner of the building or to a location standing over Mumford). (A452, A471-72, A482-83, A484). Once the other shooters had completed their tasks—one shooting Mumford and another shooting bullets on the other side of building 105—Henry and the other shooters left at the same time and drove away together from the crime scene. (A256, A258-59, A262, A264, A287-88, A292, A312-14, A380-81, A383-85, A390, A392-94, A415, A450-54, A458-59, 510-12, A514, A516-17, A519, A521-23). All of Henry's actions—such as standing in a separate location

and shooting into the air—coordinated with the actions of his accomplices.[67] Thus, a rational factfinder could reasonably infer from the evidence that Henry did not timely terminate his participation in Mumford's murder.

Moreover, Henry failed to make a "proper effort" to prevent the commission of Mumford's murder. As required by the statute, Henry had to wholly deprive his complicity "of its effectiveness" in committing Mumford's murder prior to its occurrence or give timely warning to the Attorney General (or to the police or otherwise makes a proper effort to prevent the commission of the offense).[68] Henry does not argue that he gave the Attorney General a warning of the pending murder, nor could he. Henry made no effort to warn law enforcement of his plan with his co-conspirators. Viewed in the light most favorable to the State, there was sufficient evidence for a rational factfinder to conclude beyond a reasonable doubt that Henry failed to terminate his complicity and failed to warn of his proposed actions.

The holding in *Lee v. State*[69] also supports that conclusion that Henry did not terminate his complicity prior to the commencement of the offense. Just as in *Le*e,

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[67] *See Goode v. Commonwealth*, 663 S.E.2d 532, 536 (Va. Ct. App. 2008) (holding trial court properly found that defendant was principal in second degree (*i.e.*, an accomplice) in commission of attempted robbery and aggravated malicious wounding where defendant's conduct was "in concert with" principal and he was in proximity to the attack, showing proof of defendant's presence, shared criminal intent, and overt criminal acts in furtherance of the attack).

[68] 11 *Del. C.* §§ 273(3)a and (3)b.

[69] 2012 WL 1530580.

Henry did not take actions to show he had abandoned his criminal purpose. Both Henry and the third shooter (Holland) stood on the opposite sides of building 105 and shot their guns while Latham-Purnell shot Mumford at the back of the building. He entered the apartment complex at the same time as the other two shooters, remained in the apartment complex while the two other shooters accomplished their roles in the murder, and left the complex at the same time and in the same cars as the other shooters. In fact, Henry's actions of shooting into the air next to the front of building 105 while the other two shooters employed their guns on either sides of the same building constituted even less effort to stop the murder of Mumford than the actions that Lee took, which were trying to convince his co-defendants to leave the house where the robbery took place.

Henry contends it was a mistake for the Superior Court to conclude that his walk partway towards the backyard of building 105 while Latham-Purnell was shooting Mumford evidences his further complicity. Opening Br. at 48. But Henry misstates the court's words. The Superior Court stated that Henry's actions, which included "arriving and leaving in tandem with his co-conspirators, repeatedly shooting a gun while in the vicinity of Building 105, and eventually going to the back corner of the building where Corey Mumford's body was located," in sum demonstrated that Henry actively participated in the conspiracy and murder of

Mumford from start to finish.[70] The Superior Court's conclusion correctly interprets the law of accomplice liability.[71]

[70] *Henry*, 2024 WL 3757156, at *5.

[71] *Clay*, 164 A.3d at 914.

CONCLUSION

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

Respectfully submitted,

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Date: June 20, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JHALIR HENRY,	§	
	§	No. 519, 2024
Defendant Below,	§	
Appellant,	§	On appeal from the Superior Court
	§	of the State of Delaware
v.	§	
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

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Date: June 20, 2025

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