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Case Number 519,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

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

REPLY BRIEF

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Dated: July 2, 2025

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Appellant Jhalir Henry, through the undersigned attorney, replies to the State's Answering Brief as follows:

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.

Jhalir Henry was charged by indictment, alleging he, along with his codefendants, "did intentionally cause the death of Corey Mumford." That was the plain, concise and definite written statement of the essential facts constituting the offense. At trial, the State freely admitted that Mr. Henry did not intend Mr. Mumford's death and stated that the intended target may never be known. At no time during trial did the State invoke the doctrine of transferred intent. The State never asked the judge to consider transferred intent until after defense counsel's closing argument.

The Superior Court, in considering Mr. Henry's motion for judgment of acquittal held, "it does not matter whom Defendant actually killed, as long as he acted with the intent to cause *someone's* death."[1] The judge's misapplication of the statute was error.

[1] *State v. Henry*, 2024 WL 3757156 at *3 (Del. Super. Aug. 12, 2024)(emphasis in original).

The State cannot now renounce the way it chose to charge Mr. Henry.

According to the State, the plain language of our Murder First Degree statute, the element of intent is "directly linked" to the causing of another person's death, not to the identity of the person.[2] The State concurs with the Superior Court's holding that the elements of Murder First Degree do not require the State to identify the victim.[3]

That argument (and the Superior Court's holding) elides the fact that when the State indicted Mr. Henry, it *did* connect the intent to the victim. Intent is the person's conscious object to engage in conduct of that nature or to cause that result.[4] As charged, Mr. Henry's conscious object was to cause the death of Corey Mumford. The State did not attempt to prove that and admitted it could not do so.

The State chose to live with its indictment. The State never presented a reindictment. The State never moved to amend the indictment to conform to the evidence. The State never asked the judge to instruct himself on transferred intent. Any of those applications would have placed Mr. Henry on notice of what he was to defend.

Murder is a specific intent crime. The Superior Court is wrong that it makes no difference to whom the intent was directed. The intent must be directed toward

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[2] Ans. Br. at 22.
[3] Ans. Br. at 22.
[4] 11 *Del. C.* § 231(b).

the victim. Of course, it is still illegal to shoot and kill someone, but we have crimes for that in our code that require proof of only a reckless state of mind. But the State chose not to charge Mr. Henry with Murder Second Degree or Manslaughter. Likewise, the State declined to ask the judge to consider lesser-included offenses.

Because the indictment linked the intent element directly to the victim, the Superior Court erred in holding that the victim does not matter so long as some person was killed.

The State also asserts that "the evidence demonstrates that either Henry, his co-conspirators, or both fired 9 shots into Mumford's body and that Mumford died as a result."[5] That is factually untrue, even in a light most favorable to the State. The evidence was undisputed that Shyheem Latham-Purnell stood feet away from Mr. Mumford and fired nine shots at him. In a light most favorable to the State, Mr. Henry stood in the parking lot firing into the sky in the opposite direction from where Latham-Purnell was killing Mr. Mumford.

The State did not place Mr. Henry on notice of a transferred intent theory; it was error for the judge to rely upon it post-trial.

The State endorses the Superior Court's shift to transferred intent as a means of establishing culpability.[6] According to the State, the prosecutor rebutted the

[5] Ans. Br. at 25.
[6] Ans. Br. at 26.

theory of transferred intent by arguing that it was not required to establish the identity of the original victim.[7] That is true; the State never mentioned transferred intent until long after the evidence was closed and after defense counsel's closing argument.

As discussed in the opening brief, the trial judge erred in holding that nothing in our transferred intent statute requires the State to establish who was the intended victim.[8] Indeed, the Court found that our statute states the opposite, citing *State v. Gardner*.[9] But, as the Commentary to our code explains, transferred intent applies when the defendant intends to kill A but instead kills B. Under our law, the State must establish that the defendant intended to kill A before the intent can transfer.[10] Indeed, there is no Delaware Murder First Degree case in which the defendant was charged with intending to kill a random unknown person but instead killed the victim.

For a specific intent crime like Murder First Degree in Delaware, the State must prove who the "A" is that the defendant intended to kill before the intent can transfer to "B." That was the intention and plain meaning of the transferred intent

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[7] Ans. Br. at 27.
[8] *State v. Henry*, 2024 WL 3757156 at *4.
[9] 203 A.2d 77 (Del. 1964).
[10] *See*, Op. Br. at 39-40.

statute, as the Commentary and *Gardner* make clear. It was error for the trial judge to find otherwise.

Although the common practice in Delaware is to indict transferred intent, the State asserts that it is not required to do so.[11] The State cites several out-of-state cases for that proposition. The cases are worth a closer look.

In the Matter of K.W.G., a Child,[12] a Texas appellate case, a juvenile was charged with arson and other offenses in connection with criminal mischief at an elementary school.[13] At trial, the judge instructed the jury that the intent to cause criminal mischief could transfer to the assault charges under Texas transferred intent law – the result (injuries to people) was different than intended.[14] The Court rejected the defense argument that the transferred intent element must be charged in the petition.[15] But, unlike Mr. Henry's case, the defense was put on notice of transferred intent because it was placed in the jury instructions.

In *Garcia v. State*,[16] the defendant had a verbal argument with Javier Gomez and promised he would be back later. He did come back. While intending to kill Gomez he killed Joe Mata.[17] Defense counsel objected to the transferred intent

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[11] Ans. Br. at 26.
[12] 953 S.W. 2d 483 (Tex. App. 1997).
[13] *Id.* at 485.
[14] *Id.* at 487.
[15] *Id.* at 488.
[16] 791 S.W. 1d 279 (Tex. App. 1980).
[17] *Id.* at 281.

instruction because the indictment did not charge transferred intent.[18] The appellate court affirmed. Again, unlike Mr. Henry's case, the defense was on notice of the transferred intent theory and had the opportunity to object to the jury charge.

In *People v. Franklin*,[19] the defendant intended to kill Christine Washburn but injured her instead. Some evidence at trial demonstrated that he may have intended to kill a different person when he struck Washburn with his car.[20] The defense argued that the State did not charge transferred intent, so the jury should not have been so instructed. But in Illinois, transferred intent is embedded in the first degree murder statute: "a person commits the act of first degree murder when he kills an individual if, in performing the acts which cause the death, he intends to kill that individual *or another*."[21]

In *State v. Bakdash*,[22] the defendant was charged with second degree murder. He attempted to kill someone he had been arguing with by running him over in his car.[23] He killed an innocent pedestrian instead. The defense objected to the issuance of a transferred intent instruction as an impermissible amendment to the indictment.[24] But Minnesota is another state which includes "or another" in its

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[18] *Id.* at 280.
[19] 588 N.E. 2d. 398 (Ill. App. 1992).
[20] *Id.* at 399.
[21] *Id*., *citing*, 720 ILCS 5/9-1(a)(1)(emphasis added).
[22] 830 N.W. 2d 906 (Minn. App. 2013).
[23] *Id.* at 911.
[24] *Id.* at 912.

murder statutes.[25] Moreover, the Court held that murder is a specific intent crime where the intent to kill a specific person must be established before the intent can transfer to another.[26]

The State's foray into other states' jurisprudence establishes that in every case, the defendant was placed on notice of the government's transferred intent theory either pretrial or the prayer conference at the latest. In Mr. Henry's case, the State never mentioned transferred intent until rebuttal closing, and even then, it was only to rebut the defense closing argument. For the charges Mr. Henry was called upon to defend by indictment, Mr. Henry was not guilty because there was no evidence presented that he or the codefendants intended to kill Corey Mumford. In fact, the opposite is true as the record established that Mr. Mumford was friends with Mr. Henry and generally liked. At the close of the evidence, the State could have sought lesser-included offenses. But the State elected not to do so, and rather, stood by its indictment.

The State asserts that it "did not even have to argue that transferred intent applied here because a trial court may find a defendant guilty based on more than one theory and need not specify the theory under which it found him guilty."[27] But that is not so. A trial judge sitting as factfinder and applier of the law cannot

[25] *Minn. Stat.* § 609.19, subd.1(1).
[26] *Bakdash*, 830 N.W. 2d at 913.
[27] Ans. Br. at 27.

simply make up what law applies; the parties must present the legal theories upon which their cases rely. Even if there is not a formal prayer conference as there would be in a jury trial, the judge still needs to apply the law. In *Harrison v. State*,[28] the judge in a bench trial found that the defendant had not proven self-defense. Counsel informed the judge that the defendant has no affirmative burden to prove self-defense, but rather, it goes to reasonable doubt. The Court then amended its legal reasoning but still found the defendant guilty.[29]

On appeal, this Court discussed the legal precepts involved in a justification defense, noting that if the defendant presents some credible evidence supporting a defense, the jury must be instructed on the defense. This Court held, "since this was a bench trial jury instructions are not involved, *but the principle is the same.*"[30]

In *Ramsey v. State*,[31] this Court held that lesser-included offense instructions in bench trials are subject to the same party-autonomy rule as in jury trials. This Court reversed the Superior Court's *sua sponte* decision to instruct itself on a lesser-included offense neither party requested.[32]

In Mr. Henry's case, the State never mentioned transferred intent and certainly did not ask the judge to consider it. The first time the State mentioned it

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[28] 2017 WL 3860069 (Del. Sept. 1, 2017).
[29] *Id.* at *3.
[30] *Id*. at *2 (emphasis added).
[31] 996 A.2d 782 (Del. 2010).
[32] *Id.* at 784-785.

was in rebuttal closing. As in *Ramsey*, it was error for the judge to *sua sponte* instruct himself on transferred intent.

The cases the State cites for the proposition that a judge in a bench trial can apply whatever law he or she chooses whether applied for or not are not helpful to the State.

People v. Alexander,[33] an Illinois case, does hold that a judge may find a defendant guilty of an offense based on more than one theory and need not specify which theory. But in *Alexander*, that holding had more to do with the burglary statute. Under Illinois law, the focus of the burglary statute is the unlawful entry with intent to commit a felony. The actual felony committed while committing the burglary is not relevant.[34] As such, the judge did not need to specify which felony the burglar intended to commit.

In *People v. Hudson*,[35] the defendant was a non-shooter charged as an accomplice in a manslaughter case. He argued imperfect self-defense: an intent to kill based on a mistaken belief that self-defense is required at the time.[36] The appellate court held that the judge in a bench trial did not need to specify whether he found Hudson guilty based solely on accomplice liability or whether the judge

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[33] 546 N.E. 2d 1032 (Ill. App. 1989).
[34] *Id.* at 196.
[35] 519 N.E. 2d 28 (Ill. App. 1988).
[36] *Id.* at 31.

found that Hudson's belief that self-defense was needed was unreasonable. In other words, the judge need not specify which subsection of a statute applies.[37]

Unlike Mr. Henry's case, the State's accomplice liability argument and the defense's imperfect self-defense argument were both made to the trial judge.

State v. Rieker[38] is a police officer's appeal from an assault conviction. Rieker was working private security at a hospital and was called upon to handle an unruly patient.[39] Even though the patient was leaving the hospital voluntarily, Rieker assaulted him.[40] Rieker put forth a self-defense case at his bench trial.[41] The trial judge gave a general verdict. The Nebraska Supreme Court held that the judge's rejection of Rieker's defense was implicit in the verdict and that the judge was not required to explicitly state that fact.[42]

At Mr. Henry's trial, the State did not raise the theory of transferred intent until after the evidence was closed and their closing argument was over.

In *United States v. Livingston*,[43] the defendant was charged with failing to report for military service. He asked for a bench trial. The judge would only agree to a bench trial if Livingston agreed that the judge would not be making findings of

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[37] *Id.* at 32.
[38] 14 N.W. 3d 855 (Neb. 2025).
[39] *Id.* at 863.
[40] *Id.* at 864.
[41] *Id.* at 868.
[42] *Id.* at 871.
[43] 459 F.2d 797 (3d Cir. 1972)

fact and conclusions of law.[44] The Third Circuit found this to be error and remanded.[45] As such, this case is not particularly relevant.

The foregoing cases do not help the State. A judge presiding over a bench trial cannot apply whatever law he or she chooses, absent an application from the parties.

After arguing that transferred intent was sufficient to convict Mr. Henry, the State inexplicably argues that "there was sufficient evidence presented to the factfinder to find…that Henry intended to kill Mumford…"[46] But at trial, the State repeatedly argued that the three defendants did *not* intend to kill Mr. Mumford. And for good reason. They did not. In any event, the central error here by the Superior Court was finding that our Murder First Degree statute requires only intent to kill and it does not matter to whom the intent was directed so long as the defendant intended to kill someone. This Court should reverse.

[44] *Id.* at 798.
[45] *Id.*
[46] Ans. Br. at 28.

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.

The Superior Court found that the three codefendants acted in concert because they all arrived together, fired shots, and left together. That, according to the Court, was sufficient to establish that the three codefendants were working in concert.[47] The Court found additional facts that were nowhere in the record. For example, Mr. Henry, in a light most favorable to the State, did not "[run] toward Building 105 while firing shots."[48] He stood in the parking lot in front of Building 105, doing nothing for a moment, then fired shots into the sky away from where Latham-Purnell was shooting Mr. Mumford. Nor did Mr. Henry go "back to the rear of Building 105" before leaving.[49] He went partway around the side of the building, without firing more shots. Nakiya Jacobs surmised that was when Mr. Henry "realized who that was back there."[50]

The State admits that Jacobs testified that Mr. Henry stood in front of Building 105 and only walked partway around Building 105.[51] But the State also asserts that Elijah Witherspoon stated that he looked out his back door and saw Mr.

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[47] *Henry*, 2024 WL 3757156 at *4-5.
[48] *Id.* at *5.
[49] *Id.*
[50] A472.
[51] Ans. Br. at 31.

Henry standing over Mr. Mumford's body. In fact, at one point Witherspoon said he saw all three codefendants doing so. This is all despite the fact that within minutes of the homicide, Witherspoon told police that he did not see anything because he was inside his apartment.

Finding facts in a light most favorable to the State does not mean the State can avail itself of every fact, despite obvious contradictions among the witnesses. Mr. Henry cannot be both in front of the building shooting into the sky and at the same time in the backyard shooting Mr. Mumford. Besides, Larry Horsey identified Latham-Purnell as Mr. Mumford's killer.

Mr. Henry was not Latham-Purnell's accomplice.

Even in a light most favorable to the State, the trier of fact cannot make up evidence to fill gaps, as the Superior Court did here. There is no question that the three codefendants left the Gibson Avenue location and drove together to Wexford Village. The record is silent as to whether a plan was formed or what that plan was. Once they arrived, and before the shooting started, the codefendants clearly had different agendas. Latham-Purnell went directly to the backyard to kill whoever he was trying to kill. Mr. Henry idled on the sidewalk for a bit before firing into the sky. He was present at the scene. He did not aid or encourage Latham-Purnell in his deadly task.

The State, like the Superior Court, focuses heavily on the arrival and departure of the cars to establish a conspiracy.[52] The State, without any evidence, asserts, "Henry and his cohorts formulated a plan prior to going to Wexford Village Apartments and were working together to accomplish the killing of Mumford."[53] But that is all supposition; there is no evidence to support it, even in a light most favorable to the State.

The State asserts that the ballistics evidence showed that the three codefendants "were working in concert" because three different guns were used.[54] But the ballistics evidence demonstrates that the three codefendants were *not* working in concert. Mr. Henry's .40 caliber casings landed in the front parking lot. Holland's .40 caliber casings were found in the opposite corner of Building 105 near an air conditioning unit. Only Latham-Purnell killed Mr. Mumford. His 9mm casings were found in the backyard near Mr. Mumford's body.

The State and the Superior Court lean heavily on the arrival and departure of the cars to establish that Mr. Henry was an accomplice to Latham-Purnell's criminal activity. But the evidence demonstrates that Mr. Henry was merely present and did nothing to aid or encourage Latham-Purnell. He was not an accomplice.

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[52] Ans. Br. at 34-37.
[53] Ans. Br. at 35.
[54] Ans. Br. at 36.

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

As discussed in the opening brief,[55] a person is not liable for an offense if he or she terminates his or her complicity prior to its commission and wholly deprives his or her complicity of effectiveness.[56] The State, like the Superior Court, places much emphasis on the cars arriving and leaving together.[57] According to the State, Mr. Henry's conduct – standing in the parking lot and shooting into the air – "coordinated with the actions of his accomplices."[58] But the State does not say how that is true.

The State misstates the law by arguing that to qualify under Section 273, he must terminate his complicity *and* make a proper effort to prevent the commission of the offense.[59] But the exemption is available to a defendant who wholly deprives his or her complicity of its effectiveness *or* gives timely warning to the police or Attorney General, *or* otherwise makes a proper effort to prevent the commission of the offense.[60] As such, the State's argument that the exemption is not available to

[55] Op. Br. at 45-49.
[56] 11 *Del. C.* § 273(3)(a).
[57] Ans. Br. at 38-39.
[58] Ans. Br. at 39-40.
[59] Ans. Br. at 38.
[60] 11 *Del. C.* § 273(3)(a), (b).

Mr. Henry because he failed to warn the authorities or try to stop the homicide[61] should be rejected.

Whatever plan may have been hatched on Gibson Street, by the time the codefendants exited the car at Wexford Village, Mr. Henry had renounced it. Shyheem-Latham was still on board, as he went purposefully to the backyard of Building 105 and executed Mr. Mumford. Mr. Henry was not. He stood on the front sidewalk and fired shots into the sky away from the building. That conduct, although not laudable, deprived his criminal complicity of any possible effectiveness. Mr. Henry's decision not to participate in the killing of Mr. Mumford occurred before Latham-Purnell started shooting Mr. Mumford. The termination, as demonstrated by his actions, occurred as soon as he got out of the car.

It is important to keep in mind that the State presented no evidence of any plan by the codefendants. In fact, the State admitted that it did not know what the defendants were planning to do, other than to say the killing of Corey Mumford was a mistake. In that manner, this case is unlike *Lee v. State*,[62] in which the plan and purpose were clear – three men forced their way into a residence to commit a robbery. Lee warned them it was the wrong house but ended up continuing to

[61] Ans. Br. at 40.
[62] 2012 WL 1530508 (Del. Apr. 30, 2012).

participate.[63] In Mr. Henry's case, the State had no idea what was planned; direct appeal is not the time to fill in the blanks.

The State contends that Mr. Henry's partial walk towards the back of Building 105 demonstrated his continued active participation.[64] But it does not say how. There was no testimony about it, other than Jacobs' testimony that Mr. Henry fired no further shots after he left the sidewalk. "In a light most favorable to the State" gives the State every reasonable inference, but there must be some evidence from which to infer. For all anyone knows, Mr. Henry could have been going back there to remonstrate with the killer, Latham-Purnell, and get him to reconsider. Upon seeing it was too late, he returned to the sidewalk.

The defense is not entitled to that inference, but neither is the State entitled to an inference that Mr. Henry partially approached the backyard as a means of continuing to assist as an accomplice.

Because Mr. Henry terminated any complicity prior to the commission of the offense and deprived his complicity of any effectiveness, his motion for judgment of acquittal should have been granted.

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[63] *Id.* at *1.
[64] Ans. Br. at 41-42.

CONCLUSION

For the reasons stated, as well as those stated in the Opening Brief, the Superior Court erred in denying Mr. Henry's Amended Motion for Judgment of Acquittal.[65] This Court should vacate his convictions except for PFBPP.

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[65] Incorrectly stated as Amended Motion for Postconviction Relief in the Conclusion section of the Opening Brief. Counsel apologizes for the error.