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Case Number 478,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRELL REID,	§	
	§	
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	No. 478, 2024
	§	
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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NATURE OF THE PROCEEDINGS

The Opening Brief of Appellant Tyrell Reid ("Opening Br.") accurately sets forth the nature of the proceedings, including the charges asserted against Reid, the plea discussions, and the sentencing and appeal.

Reid was charged with first degree murder for the September 25, 2021 homicide of Tyaire Anderson, with assault for the shooting of two other victims who were hit with stray bullets, with three counts of Possession of a Firearm During the Commission of a Felony (one count for each shooting), and with one count of Firearm Possession of a Firearm by a Person Prohibited (PFBPP). The latter charge was tried separately, and Reid waived his right to a jury.

Following jury selection, Reid's "A" case proceeded to a five-day jury trial beginning on June 3, 2025. Reid elected not to testify in his defense. On June 10, 2024, the jury returned a verdict of guilty on all counts. Reid's "B" case (for (PFBPP) was tried to the court on June 10, 2021, and Reid was found guilty.

On October 25, 2024, the court sentenced Reid to life imprisonment for the murder charge plus an additional 36 years of unsuspended Level V time on the balance of the charges. Two prior violations of probation were discharged.

Reid filed a timely notice of appeal, raising two narrow issues: First, whether after Reid introduced testimony from his girlfriend that she had never seen him walking with a gun, the trial court erred in allowing testimony about a prior

inconsistent statement that the girlfriend had made to the police in which she admitted that she had seen Reid with a gun. Second, when the State properly introduced certain of Reid's telephone calls made from prison, whether the court erred by not *sua sponte* instructing the jury that it should not infer wrongdoing from the fact that Reid was in prison, having failed to post bail. Because Reid did not request such an instruction at trial, this claim can succeed only if the failure of the court to *sua sponte* give such an instruction constituted plain error.

SUMMARY OF ARGUMENT

I. Denied. Reid objects to the testimony of Detective Jones stating that Reid's girlfriend, Tahesha Brown, had told him that she had seen Reid with a gun. Reid does not dispute that he placed this fact at issue by eliciting testimony from Brown that she had never seen Reid with a gun. Brown's prior inconsistent statement was thus admissible pursuant to Delaware Rule of Evidence 613. Reid complains that "[r]ather than introduce [Brown's] prior inconsistent statement while she was on the stand, the State waited to introduce this testimony through Detective Jones." But, Detective Jones' testimony was introduced only after Brown was asked about and failed to recall making the statement to Detective Jones. Moreover, because of a prior agreement of the parties not to introduce evidence about whether Brown had seen Reid with a gun, Brown's prior inconsistent statement was redacted from the State's recording of her interview. When Reid put the statement at issue by eliciting testimony from Brown that she had never seen Reid walking with a gun, Brown's prior inconsistent statement could *only* be introduced through the testimony Detective Jones. Therefore, the trial did not err by permitting the State to introduce Brown's prior inconsistent statement through Detective Jones' testimony. Reid also complains that there was no instruction that Brown's statement was admissible only to permit the jury to assess her credibility, and not for the truth of the matter stated. However, Reid never requested such an instruction, and therefore waived any

argument that such an instruction was required. Reid does not argue that the failure of the court to give such an instruction was plain error and, in the circumstances of this case, no claim of plain error could succeed.

II. Denied. Reid concedes that he did not object to introduction of the calls he made from prison and did not request an instruction to the jury about how to consider the evidence. While Reid now claims that the failure to give a limiting instruction was plain error because the jury could infer that Reid's imprisonment had bearing on his guilt or indicated that Reid had a bad character, the facts do not support this argument. This is not a case in which in which Reid was imprisoned for a crime other than the one for which he was being tried. Rather, the testimony presented to the jury established that Reid was imprisoned for the murder and other crimes for which he was being tried, and that he remained in prison only because he was unable to post bail. Therefore, the both the fact that Reid was in prison at the time of the phone calls and the reason for that imprisonment were known to the jury, and the failure of the judge to give a *sua sponte* instruction was not plain error.

STATEMENT OF FACTS

Shortly before 1:00 PM on September 25, 2021, three people were shot in the 400 block of North Monroe St. in Wilmington, Delaware.[1] Tyaire Anderson was shot four times and died.[2] W. B., age 13, was playing outside and was shot in the arm.[3] D. M.[4], age 8 at the time, was talking with friends and was shot in the mouth.[5]

Police arrived at the scene almost immediately, but were not able to save Mr. Anderson.[6] However, police immediately began investigation of the crime, securing the area and locating surveillance cameras that might have preserved relevant evidence.[7]

The Wilmington police, led by Detective Devon Jones,[8] systematically gathered video evidence from numerous surveillance cameras which filed the crime scene and several blocks surrounding it.[9] Detective Jones and his colleagues were able to splice together video showing the movements of the assailant leading up to

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[1] Opening Br. 7; A141-42; A175.
[2] A210; A470-72.
[3] A222; A225
[4] Minor victims are being referred to by their initials per Supr. Ct. R. 10.2.
[5] A230-34.
[6] A145.
[7] A147-151.
[8] A259.
[9] A260-70.

the shooting, the shooting itself, and the immediate aftermath which showed the assailant fleeing on foot.[10]

The surveillance tapes did not reveal the face of the shooter, who was wearing a mask.[11] However, from the surveillance tapes, police were able to observe that the shooter was wearing a black Nike hoodie[12] even though the temperature on the day of the shooting was over 80°,[13] that the assailant had a peculiar walk in which his toes pointed outward,[14] that the shooter was wearing distinctive sneakers,[15] and that the shooter had been talking to two people immediately prior to the shootings.[16]

In addition, by observing a portion of the video in which the assailant was standing next to a brick wall with a utility meter, police were able to establish that the shooter was 5'5" tall, by measuring the height of the utility meter and the mortar lines above it.[17] And, police were able to determine from the videotape that the people to whom the shooter was talking immediately prior to the murder were Donald Turner (who went by "Don Don") and Lauren Adams (who went by

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[10] Ex. 49; A277-78.
[11] A278-79; A11; A235; A773.
[12] A287-88; A501; Ex. 59.
[13] A176; A220.
[14] A505; Ex. 49; A625; A733.
[15] A414; A421-22.
[16] A278-79; A 287; A290; Ex. 56.
[17] A301-05; Ex. 61.

"Weezy").[18] The police interviewed Turner and Adams. Turner was unable to recall who they were speaking to.[19] Adams was not available at trial, so what he told the police was not admissible at trial.[20] However, police were able to determine (likely from Adams' statement to the police that was not presented at trial) that the person to whom Turner and Adams were talking (which the surveillance video demonstrated was the shooter) was someone who went by the name "Skillz."[21] The Wilmington police knew that Reid went by the name "Skillz,"[22] so they went back to Turner and showed him a photograph of Reid.[23] Turner identified the person in the photograph as the person to whom he and Adams were taking just prior to the shooting, and, unprompted, said person went by the name "Skillz."[24]

Substantial evidence confirmed that Reid went by the nickname "Skillz" and was in fact the shooter. As to the nickname, Reid has the name "Skillz" tattooed on his right forearm[25], and he admitted that he goes by the name "Skillz."[26] And, substantial evidence corroborated that Reid was the person shown on the video as

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[18] A281-82; A287.
[19] A323.
[20] A 660-61; A383-85.
[21] A347.
[22] A 446-47.
[23] A347.
[24] A342-44; Ex. 64; A367-68.
[25] A381; Ex. 68.
[26] A382.

the shooter. Reid, like the shooter on the video, is 5'5" tall.[27] Reid is known to wear black, tightfitting clothing[28], including a black Nike hoodie[29], and is known to wear hoodies even in hot weather.[30] Reid is also known to wear distinctive Balenciaga sneakers that have features matching those observed in the surveillance video[31] — indeed, Reid wore those sneakers to his first police interview, at which they were seized as evidence.[32] Reid's longtime girlfriend, Tahesha Brown, told police that the distinctive walk of the assailant in the surveillance videos matched that of Reid.[33] Finally, because Reid was obligated to report regularly to the police,[34] a police officer (Detective Reimer) was also able to identify the assailant's distinctive walk.[35] The jury also saw police footage of Reid walking during his interviews with Detective Reimer, and could itself see the similarities in Reid's walk and that of the assailant on the surveillance videos.[36]

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[27] A306.
[28] A560; A620; A745.
[29] A540; A623.
[30] A620.
[31] A541; A620.
[32] A411-12.
[33] A505; Ex. 49.
[34] A608-09. Reid was on probation, though this information was not presented to the jury. Opening Br. 27.
[35] A624-25.
[36] Ex. 1; A691-697; Ex. 49.

In his interviews with Detective Jones, Reid stated that he was at other places at the time of the shootings.[37] While Reid elected not to testify, Tahesha Brown (with whom he had lived primarily for the past 15 years, and who is the mother of eight children with him)[38] sought to bolster alibis that Reid had given to the police. For example, Brown testified that, the night before and the morning of the murder, Reid was at Delaware Park with another girlfriend.[39] But Reid had previously told the police, on different occasions, that he was at home with his children at the time of the shooting[40] and that he was at Delaware Park[41], and he told another of his girlfriends (Desdani Leatherburry) to say that he was at the home of the Leatherburry's mother.[42] In addition to being mutually inconsistent, these alibis were contradicted by the geolocation data from Reid's cell phone, which showed that he was near the scene of the shooting when it occurred, and was not at the locations of his alleged alibis.[43]

To further cast doubt upon the veracity of Reid's alleged alibis, the State introduced recordings of telephone calls that Reid made from prison to Brown,

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[37] A385-87; A554.
[38] A486-87.
[39] A519.
[40] A387.
[41] A387.
[42] A554.
[43] A589-90.

Leatherburry, and another girlfriend, Valerie West, seeking to coordinate his alibis and related testimony.[44] For example, Reid told Brown that "I told you what to do so I can come home."[45] He can also be heard coaching both Brown and Leatherburry that Brown did not have a cell phone with a 267 area code,[46] even though Brown knew that he did.[47] Reid can also be heard coaching Brown to say that he was at home with the kids at the time of the murder, because they were kept home from school – even though the murder occurred on a Saturday.[48] Yet, in a call with Valerie West, he says that he wished he had stayed inside on the day of the murder, thus contradicting what he coached Brown to testify.[49] In another call, Reid coached Brown about a lawyer's office and a parking garage and Andy.[50] The police were able to determine that he was referring to defense attorney Andy Witherell, whose office is located by a parking garage East 14th Street.[51] In a later call with Brown, Reid said that he was sitting in the garage in Brown's vehicle at the time of the

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[44] A642, A651-681.
[45] A652-53; Ex. 93.
[46] A665-668.
[47] A668.
[48] A668-69.
[49] A670; Ex. 96.
[50] A671-72; Ex.98.
[51] A671.

murder.[52] But Brown had previously told police that she did not have a car and had to take a bus to work at the time of the murder.[53]

Finally, there was testimony about whether Brown had ever seen Reid with a gun. During an interview with police on November 3, 2021, Brown told Detective Jones that she had seen Reid with a gun on or about October 5, 2021, just 10 days after the shootings.[54] However, defense counsel and the State agreed that that portion of Reid's statement would not be presented to the jury, and it was therefore redacted from the recording of the November 3 interview that the State planned to play for the jury pursuant to 11 *Del. C.* § 3507.[55] However, when Reid's counsel cross-examined Brown, he elicited the following testimony:

> Q. Okay. Can I ask you a question? Have you ever seen Tyrell walk with a firearm in his hand?
>
> A. No.[56]

The State immediately objected to this testimony and argued that, by introducing this testimony, the defense had opened the door to Brown's prior

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[52] A674; Ex. 99.
[53] A674; A526.
[54] A531; A638.
[55] A531-32.
[56] A531.

inconsistent statement that she had seen Reid with a gun.[57] Defense counsel agreed, and the judge confirmed that "the door is open":

> [PROSECUTOR]: But Your Honor, the defense can't ask on cross have you seen him walk with a firearm and I have to get up on redirect and now say have you ever seen him with a firearm. You can't say well, I limited it to a walk.
>
> [DEFENSE COUNSEL]: That's fine.
>
> [PROSECUTOR]: I don't think that's appropriate.
>
> [DEFENSE COUNSEL]: That's fine.
>
> THE COURT: The door's open. Go ahead.
>
> [DEFENSE COUNSEL]: Okay.
>
> [DEFENSE COUNSEL]: That's fair. Ask her that.[58]

The State then asked Brown if she had ever seen Reid with a gun.[59] She denied that she had.[60] The State then asked if she had told Detective Jones in her interview with him that she had seen Reid with a gun, and she said she did not recall making that statement.[61] The State then asked again:

> Q. I'll ask you point blank. Give you another chance: Have you ever seen Tyrell Reid in your 20 years with him with a gun?
>
> A. I don't remember seeing him with no handgun.

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[57] A531-33.
[58] A533.
[59] A535.
[60] A535.
[61] A535.

Q. And you don't remember telling Detective Jones that?

A. No.[62]

Later that afternoon, Jones was recalled as a witness, and was asked about Brown's testimony that she had not seen Reid with a gun.[63] Defense counsel objected and, at sidebar, argued that Detective Jones' testimony would be hearsay.[64] The prosecutor argued that Brown's statement to Detective Jones was a prior inconsistent statement admissible under Delaware Rule of Evidence 613.[65] Defense counsel tried to argue that the State needed to lay a greater foundation to establish that Brown's prior statement was inconsistent with her trial testimony, but the prosecutor pointed out that she was directly asked if she had told Detective Jones that she had seen Brown with a gun, and she did not admit to making that statement — she instead said that she did not recall.[66] Defense counsel then shifted to saying that the statement was "hearsay because it's an out-of-court statement offered for the truth of the matter asserted, which is hearsay" — though defense counsel said that

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[62] A535-36.
[63] A633-34.
[64] A634.
[65] A634-35.
[66] A636-37.

he understood the State's argument on the exception.[67] The judge ruled that the testimony was admissible.[68] Detective Jones then testified as follows:

> Q. Detective Jones, did you ask Tanisha Brown if she had ever seen the defendant with a firearm?
>
> A. I did.
>
> Q. What did she say?
>
> A. She stated that she observed the defendant with a firearm on October 5, on or around October 5, 2021.
>
> Q. Did she describe the firearm?
>
> A. She did. She stated that the firearm was black. She further stated – – she was asked whether or not it was a semi-automatic or a revolver, and she advised that it was the type of gone without a wheel, which I knew to be a semi-automatic.[69]

The defense did not ask for any limiting instruction that this testimony should be considered solely to assess Brown's credibility.[70]

The jury convicted Jones on all counts.[71] The Court subsequently found Reid guilty on the charge of Possession of a Firearm by a Person Prohibited, to which Reid had waived his right to a jury.[72] Reid was later sentenced to life imprisonment

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[67] A637.
[68] A637.
[69] A638.
[70] A634-38.
[71] A842-844; A889-891.
[72] A852.

on the charge of murder in the first degree, and a total of 36 years at Level V for the remaining charges[73] This appeal followed.

[73] A908-09.

ARGUMENT

I. DETECTIVE JONES' TESTIMONY ABOUT BROWN'S PRIOR INCONSISTENT TREATMENT WAS ADMISSIBLE, AND REID DOES NOT ARGUE THAT THE FAILURE TO GIVE A LIMITING INSTRUCTION WAS PLAIN ERROR.

Question Presented

After Reid elicited testimony from his girlfriend, Tahesha Brown, that she had never seen Reid with a gun, was it permissible for the State to introduce testimony of Detective Jones stating that Brown had previously told him that she had seen Reid with a gun? If so, was the manner in which Detective Jones' testimony was introduced proper, and is Reid now permitted to complain that no limiting instruction was given even though Reid never requested a limiting instruction and does not argue that the failure to give such a limiting instruction was plain error?

The State argued below for the introduction of Detective Jones' testimony at A531-533 and A634-637.

Standard and Scope of Review

When an objection to admission of evidence is raised at trial, this Court reviews the trial court's ruling for an abuse of discretion.[74] Under Rule 8, "[o]nly questions fairly presented to the trial court may be presented for review. . . ."[75] When

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[74] *Stevenson v, State*, 149 A.3d. 505, 509 (Del. 2016), cited at Opening Br. 32.
[75] Supr. Ct. R. 8; *Pollard v. State*, 284 A.3d 41, 45 (Del. 2022).

an appellant in a criminal case does not raise an evidentiary claim in the trial court, this Court may review such questions only for plain error.[76] Under the plain error standard of review, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[77] "Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[78]

Merits of Argument

During a recorded interview with Detective Jones on November 3, 2021, Brown told Detective Jones that she had seen Reid with a gun on October 5, 2021, which was ten days after the murder.[79] Prior to trial, the parties had reached an understanding that Brown would testify, but would not be asked whether she had ever seen Reid carrying a gun.[80] The State therefore redacted Brown's statement

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[76] *E.g.*, *Wilson v. State*, 950 A.2d 634, 641 (Del. 2008).

[77] *Small v. State*, 51 A.3d 452, 456 (Del. 2012) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).

[78] *Wainwright*, 504 A.2d at 1100; *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981).

[79] A487-88; A497; A531; A638.

[80] A531-32.

that she had seen Reid with a firearm on October 5, 2021 from the Section 3507 statement the prosecutor planned to use at trial.[81]

Despite the parties' understanding, when questioning Brown about her statement to the police, Reid's counsel asked: "Have you ever seen Tyrell walk with a firearm in his hand?"[82] Brown responded "No."[83] The State objected to this testimony on the basis of the parties' prior understanding and argued that by eliciting this testimony, the defense opened the door to Brown's prior statement that she had seen Tyrell Reid with a gun.[84] Reid's counsel agreed the State could ask on cross whether Brown had seen Reid with a gun (not limited to "walking with a gun").[85] The trial judge agreed, ruling that as a result of the testimony elicited by the defense, "[t]he door's open."[86]

The State then asked Brown whether she had ever seen the defendant with a gun. When she answered "No," the following testimony occurred:

Q. Didn't you tell Detective Jones that you did?

A. I don't remember that.

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[81] *Id.*
[82] A531.
[83] *Id.*
[84] A532.
[85] *Id.*, quoted at p. 13, *supra.*
[86] *Id*, quoted at p. 13, *supra.*

> Q. Oh, you don't remember that. You remember everything else. You don't remember that?
>
> A. No.
>
> Q. I'll ask you point blank. Give you another chance: Have you ever seen Reid in your 20 years with him with a gun?
>
> A. I don't remember seeing him with no handgun.
>
> Q. And you don't remember telling Detective Jones that?
>
> A. No.[87]

At this point, the State could not play the recording of Brown's prior inconsistent statement to Detective Jones, because, due to the prior agreement of the parties, Brown's statement about having seen Reid with a gun had been redacted from the recording. When Brown's testimony concluded she was instructed that she remained under subpoena and was to remain available in case the defendants wished to call her as a witness.[88]

That afternoon, the State recalled Detective Jones to testify about Brown's statement to him that she had previously seen Reid with a gun.[89] Reid objected and argued that the proposed testimony was hearsay, but the State argued that it was a prior inconsistent statement which was admissible as a hearsay exception under Rule

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[87] A535.
[88] A544.
[89] A633-34.

613.[90] Reid argued that the State needed to lay some more foundation to establish a prior inconsistent statement[91], but the State pointed out that Brown was specifically asked whether she had told Detective Jones that she had seen Reid with a gun, and she repeatedly said she did not recall making that statement to Detective Jones.[92] The trial court overruled Reid's hearsay objection.[93] Notably, Reid did not object to the manner in which Brown's prior inconsistent statement was proposed to be presented (*i.e.*, through Detective Jones' testimony, rather than playing a recording of Brown's statement) and did not request any limiting instruction.[94]

Detective Jones then testified that Brown had told him that she had observed Reid with a firearm on or around October 5, 2021, that she described the firearm as black, and that she said it was the type of gun without a wheel, which Detective Jones knew to be a semi-automatic.[95]

It is not clear whether Reid objects on this appeal to the admissibility of the Brown's prior inconsistent statement, or only to the manner in which it was presented. Under Delaware Rule of Evidence 613, however, Brown's statement was admissible. Rule 613(b) provides that "[e]xtrinsic evidence of a witness's prior

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[90] A634-36.
[91] A636.
[92] A636-637.
[93] A637.
[94] A634-638,
[95] A638, quoted at p. 15, *supra*.

inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires." Subsection (c) of the rule provides that "[i]f a witness does not clearly admit that he made the prior inconsistent statement, extrinsic evidence of such statement is admissible." Here, Brown did not admit telling Detective Jones that she had seen Reid with a gun; to the contrary, she testified twice that she did not recall making such a statement to Detective Jones. Accordingly, under Rule 613(c), "extrinsic evidence" of Brown's prior statement (*i.e.*, Detective Jones' testimony) was admissible.

Reid's principal argument is that, under *Robinson v. State*,[96] *Wammock v. Celotex Corp.*,[97] and *Givens v. State*,[98] "[t]he trial court abused its discretion when it permitted the State to introduce hearsay testimony of Brown's prior inconsistent statement through Jones." Opening Br. 42. Reid contends, "[r]ather than introduce [Brown's] prior inconsistent statement while she was still on the stand, the State waited to introduce this testimony through Detective Jones." Opening Br. 37; *accord*, Opening Br. 39.

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[96] 3 A.3d 257 (Del. 2010).
[97] 793 F.2d 1518 (11th Cir. 1986).
[98] 2017 WL 2465195 (Del. June 6, 2017).

Robinson, *Wammock* and *Givens* do not support Reid's argument. Indeed, a fair reading of those cases supports the trial court's admission of the evidence at issue.

In *Robinson*, Robinson and a codefendant robbed a drug dealer, and one of them shot him. Robinson confessed to firing the shot that killed the victim.[99] Robinson's co-defendant, Austin, accepted a plea offer and agreed to testify as a prosecution witness at Robinson's trial.[100] Austin testified and was cross-examined, and was not asked any questions regarding a prior statement he had made to Detective Smith.[101] Thereafter, Robinson sought to call Detective Smith to testify about an inconsistent statement that Austin had previously made to him.[102] This Court engaged in a thorough analysis of prior case law and Rule of Evidence 613. The court noted that the traditional rule, prior to the adoption of Rule 613, was that a prior inconsistent statement could be introduced only if the declarant was questioned about "the circumstances of the when the statement was made and verifying that the witness made it", thus "reveal[ing] the content of the statement to

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[99] 3 A.3d at 259.
[100] *Id*. at 261.
[101] *Id*. at 262.
[102] *Id.* at 261-62. The Supreme Court opinion does not disclose the content of this prior inconsistent statement.

the witness before questioning and eliminat[ing] the element of surprise."[103] The Court noted that Rule 613 "relaxed any absolute requirement" that the prior procedures be followed[104] and that Rule 613 requires instead "that the witness be provided an opportunity to explain his or her inconsistent statement" but that "this explanation may occur on direct examination or redirect examination, cross-examination or at any other point in the trial."[105] In other words, there is no *requirement* that the prior inconsistent statement of the witness be played while the witness is on the stand. But, the Court held, "Rule 613(b) does not supplant the traditional method of confronting a witness with his inconsistent statement prior to its introduction into evidence as the *preferred* method of proceeding."[106] Accordingly, this Court held that "the trial judge did not violate Robinson's constitutional rights and did not abuse his discretion by requiring Robinson's attorney to follow the traditional sequencing procedures for impeaching a witness with a prior inconsistent statement."[107] *Robinson* did not hold that the "traditional sequencing" is *always* required; it held only that the trial court judge did not abuse his discretion in the case before him by requiring such sequencing.

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[103] *Id.* at 262 (discussing *Queen Caroline's Case*, 2 Br. & B 284, 129 Eng. Rep. 976 (1820)).
[104] *Id.* at 262.
[105] *Id.* at 264.
[106] *Id.*, quoting *Wammock*, 790 3 F.2d at 1552 (emphasis in original).
[107] *Id.*

Wammock, which *Robinson* cites extensively, involved an asbestos case in which plaintiff's expert witness testified about correspondence with employees of National Gypsum about the dangers of incorporating asbestos into gypsum boards.[108] During cross-examination, the expert was not asked about any prior inconsistent statements.[109] Upon completion of his testimony, he returned to his state of residence (Virginia).[110] Prior to resting its case, National Gypsum sought to introduce transcripts of prior statements by the expert in which he testified that he did not recall having any dealings with National Gypsum.[111] Plaintiff objected to the evidence because the expert had returned to Virginia and was not available to clarify or explain the inconsistency.[112] Plaintiff's counsel represented that, if given the opportunity to explain, the expert would testify that his recollection had been refreshed by documents presented to him during his direct testimony tying Saranac Laboratory to National Gypsum.[113]

The court excluded the expert's prior inconsistent statements, noting that under Rule 613(b), "one key to the admissibility of the extrinsic evidence of the prior

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[108] 793 F.2d at 1520.
[109] *Id.* at 1124.
[110] *Id.* at 1521, 1523.
[111] *Id.* at 1520.
[112] *Id.* at 1521.
[113] *Id.*

inconsistent statement is the availability of the witness for recall."[114] The court ruled that the expert was not available for recall, and therefore, the prior inconsistent statement was properly excluded.[115]

Givens is consistent with *Robinson* and *Wammock*. Givens was charged with Possession of a Firearm by a Person Prohibited after a gun was found in a car that he had allegedly been driving.[116] Givens' girlfriend, Starasia Gregory, testified at trial that Givens had not driven the car in which the gun was found.[117] Over defense counsel's objection, the State played a tape recording of a telephone conversation that Gregory had with an investigator in which she told the investigator that Givens had been driving the car earlier in the day.[118] The Court held that because "Gregory was given the opportunity to explain her prior inconsistent statement, and defense counsel was permitted to question her about the statement" the prior statement was properly admissible under Delaware Rule of Evidence 613.[119]

Robinson, *Wammock* and *Givens* support the admissibility of Brown's prior inconsistent statement through the testimony of Detective Jones. Here, Brown was confronted with her prior statement before it was offered into evidence – she was

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[114] *Id*. at 1523.
[115] *Id*. at 1523-27.
[116] 2017 WL 2465195 at *1-*2.
[117] *Id*. at *2.
[118] *Id*.
[119] *Id*. at *3.

specifically asked about her prior inconsistent statement to Detective Jones while she was on the stand, and she said she did not recall making the statement. Reid could have asked her to explain the apparent discrepancy between her statement on the stand and what she allegedly told Detective Jones, but he elected not to do so.

Moreover, in stark contrast to *Wammock* (in which the witness whose prior inconsistent statement was sought to be introduced was not available), here Brown was expressly told that she was still under subpoena and needed to be available in case defense counsel wished to recall her as a witness.[120] Thus, following Detective Jones' testimony, Brown remained available to be recalled to explain the apparent discrepancy between her in court testimony that she had never seen Reid with a gun and her prior inconsistent statement to Detective Jones that she had. Thus, defense counsel had the opportunity to ask Brown to explain her prior inconsistent statement. This is sufficient to permit admissibility under Rule 613. As *Wammock* expressly holds, "if the witness is or might be available for recall and the opposing party simply fails to recall him, there has been a sufficient *opportunity* to explain such that the extrinsic evidence should be admitted under Rule 613(b)."[121] Accordingly, the trial court did not abuse its discretion in allowing Detective Jones' testimony about Brown's prior inconsistent statement.

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[120] A544.

[121] 793 F.2d at 1522-23 (emphasis in original).

Reid now argues for the first time that the trial court erred by not giving an instruction that Brown's prior inconsistent statement should be considered only for the issue of Brown's credibility, and not for the truth of the statement that Brown had seen Reid carrying a gun.[122] This claim was not made in the trial court, where it could easily have been resolved. Accordingly, the claim may not be asserted now absent a demonstration that the failure to give a limiting instruction constituted plain error.

Reid bears the burden of demonstrating that the trial court's failure to give a limiting instruction constituted plain error, and that he suffered prejudice as a result.[123] Here, Reid makes no attempt to meet that burden — indeed, he does not even assert that the trial court's failure to give a limiting instruction constituted plain error. Nor could such an argument succeed. Simply put, the question of whether Brown had ever seen Reid with a gun was at most a peripheral issue in the case. Indeed, the prosecutor would not have presented any such testimony if the defense had not elicited testimony from Brown that she had not seen Reid "walking with a gun."[124]

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[122] Opening Br. 39-41.
[123] *Palmer v. State*, 326 A.3d 710, at *1 (Del. Aug. 27, 2024); *Williams v. State*, 98 A.3d 917, 922 (Del. 2014).
[124] A531-32.

Rather, the principal issue at trial was whether the person seen on surveillance videotapes committing the murder was Reid. As to that critical issue, the evidence was overwhelming, as discussed above (pp. 6-9, *supra*): the perpetrator was seen talking to two people shortly before the murder occurred. Only one of those people was available for trial – he identified a photo of Reid as that person, and referred to him as "Skillz." The police knew that Reid went by the nickname Skillz, and Reid has a tattoo on his forearm with his nickname, "Skillz," and he admitted to going by that name. Additional evidence corroborated that Reid was the person seen on the video committing the murder, including distinctive sneakers with features matching sneakers that Reid typically wore, and video evidence that the person seen on the video committing the murder was 5'5" tall, which is Reid's height. Witnesses also testified that Reid liked to dress in all black hoodies, even in warm weather, which matched the clothing of the assailant in the videos. And a police officer (who had repeatedly observed Reid) and Brown (Reid's girlfriend of twenty years) both testified that the very distinctive walk of the assailant in the videos matched that of Reid, which the jury could also see with its own eyes when the State played the surveillance video and earlier video of Reid walking into a police interview. Given the wealth of evidence that Reid was the person seen on the videos committing the murder, the trial court's failure to give an instruction that Brown's prior inconsistent

statement should be considered for Brown's credibility, and not for the truth of the statement that Brown had in fact seen Reid carrying a gun, was not plain error.

II. THE TRIAL COURT'S FAILURE TO INSTRUCT THE JURY NOT TO CONSIDER REID'S CUSTODY STATUS IN ASSESSING HIS GUILT WAS NOT PLAIN ERROR.

Question Presented

Whether the trial court erred by not *sua sponte* instructing the jury not to take into consideration Reid's custody status on the charges after the State introduced transcripts of phone calls recorded while Reid was in prison. Reid admits that this claim was not presented to the trial court (Opening Br. 43), and the State therefore had no opportunity to address it below.

Standard and Scope of Review

Where (as here) a claim is not presented to the trial court, Rule 8 prevents review of that claim on appeal unless the appellant meets its burden of demonstrating plain error.[125] Under the plain error standard of review, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[126] "Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic,

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[125] *E.g.*, *Wilson v. State*, 950 A.2d 634, 641 (Del. 2008).

[126] *Small v. State*, 51 A.3d 452, 456 (Del. 2012) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).

serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[127]

Merits of Argument

One of Reid's attempted defenses at trial was that he had an alibi proving that he could not have committed the murder, including a claim that he was at Delaware Park at the time of the murder.[128] As part of its effort to rebut that claim and certain of Reid's other assertions, the State introduced recordings of calls that Brown had made while in prison, to Brown and two of Reid's other girlfriends, seeking to coordinate his various alleged alibis and reiterating that Brown knew "what to do so I can come home."[129] In order to lay a foundation for those recordings to be introduced into evidence, Detective Jones testified that Reid was at the Howard R. Young Correctional Institute because he was unable to post bail.[130] Detective Jones also explained the procedure by which inmates are permitted to make telephone calls.[131]

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[127] *Wainwright*, 504 A.2d at 1100; *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981).
[128] A679; see also A519, A558; A780-81. In fact, Reid attempted to present several contradictory alibis. A748-753.
[129] A652.
[130] A644-45.
[131] A645-49.

Reid does not object to the introduction into evidence of the recording of the phone calls he made from prison. Rather, he contends that the trial court should have instructed the jury not to consider his custody status in its deliberations. Reid did not raise this issue in the trial court, and instead contends that that the trial court should have *sua sponte* given such an instruction, and its failure to do so constituted plain error.[132]

Reid's argument relies primarily on *Harris v. State*.[133] *Harris* involved prison recordings, with the defendant/appellant asserting that the probative value of the recordings was outweighed by the prejudice of their admission. Harris was accused, *inter alia*, of tampering with a witness by offering to pay him $500 to change his testimony;[134] the prison recording was of a male voice using Harris' State Bureau of Identification number discussing with an unidentified woman payment of $500 to a witness to change his testimony.[135] Thus, the Court concluded, the recordings corroborated the testimony of another witness of attempted witness tampering.[136] The Court rejected Harris's claim of unfair prejudice noting that (i) one of the charges for which Harris was being tried was Breach of Conditions of Bond during

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[132] Opening Br. 46-48.
[133] 301 A.3d 1175, 1185 (Del. 2023).
[134] *Id.* at 1181-82.
[135] *Id*. at 1178-89; 1182.
[136] *Id*. at 1182-83.

commitment, an element of which is that the defendant be in custody, (ii) Harris stipulated that he was in custody at the time of the phone call and (iii) the trial judge properly instructed the jury to disregard any improper inference from the fact that Harris was incarcerated during the relevant time period.[137] Notably, the Court did not hold that a cautionary instruction is mandatory, much less that the failure to give such an instruction constituted plain error.

Whether an improper ruling by a trial judge constitutes plain error is dependent upon the particular facts of the case. Here, Reid asserts that in the absence of a cautionary instruction, "[t]he jury could have believed that because Mr. Reid was in custody, he was guilty, or that he was dangerous. The jurors could have decided this case based on one of those reasons, which would be improper."[138] The record, however, belies Reid's speculation about how jurors "could have" acted. In fact, the jurors were told exactly why Reid was in prison: he had been arrested for the crime for which he was being tried, and was unable to post bail.[139] Thus, this case is different from others in which evidence reveals that a defendant was imprisoned because he had been convicted of some other, unrelated crime.

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[137] *Id.* at 1185.
[138] Opening Br. 47-48.
[139] A644-45.

Had defense counsel requested a cautionary instruction, it is likely that, based on *Harris*, the requested would have been granted. But that does not mean that the failure of the trial court to *sua sponte* give such an instruction was plain error. To the contrary, the jury knew that Reid was in prison because he had been arrested for the crime for which he was on trial, and had been unable to post bail. And, as noted above (pp. 6-15, *supra*), there was substantial evidence from which the jury could find that Reid had committed the crimes for which he was tried. In the circumstances, it was not plain error for the trial court not to *sua sponte* give a cautionary instruction to the jury regarding Reid's imprisonment.

CONCLUSION

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

Respectfully submitted,

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Date: June 23, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYRELL REID,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 478, 2024
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

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

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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DATE: June 23, 2025