



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ADRYAN JEAN-BAPTISTE,)
)
 Defendant-Below,)
 Appellant)
)
 v.) No. 455, 2024
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

On June 5, 2023, Adryan Jean-Baptiste, (“Baptiste”), was indicted on one count of Murder First and one count Conspiracy First. A11. A *nolle prosequi* was entered orally by the State at an office conference held on July 15, 2024. D.I. #29. A six-day jury trial commenced on July 15, 2024.

On the third day of trial, during a recess, the court staff brought to the trial judge’s attention that spectators sitting in front of the jury supporting the prosecution were wearing T-shirts with the decedent’s face. The court ruled that the spectators would no longer be permitted to wear the shirts during the proceedings moving forward. *See* Ex. A.

The State’s case against Baptiste rested entirely on the credibility of two jailhouse informants with lengthy criminal records, who hoped to have their sentences reduced for testifying. On July 22, 2024, at the close of the State’s case-in-chief, Baptiste moved for a Motion for Judgement of Acquittal. The court denied the motion orally from the bench for reasons stated on the record. D.I. #33. *See* Ex. B.

Baptiste was found guilty as to count one, Murder First. The judge later sentenced Baptiste to life in prison without benefit of probation or parole.

This is Baptiste’s Opening Brief in support of a timely-filed appeal.

SUMMARY OF THE ARGUMENT

1. The Trial Judge erred when he denied defense Motion for Judgment of Acquittal in light of the fact the only evidence presented was prison snitch testimony and a record completely devoid of physical evidence. In light of the State's feeble case against Baptiste, it is impossible to conclude that any reasonable jury could have convicted him of the charge set forth in the Indictment based upon the evidence presented at trial. Accordingly, the trial court should have ordered the entry of a judgment of acquittal in Baptiste's favor, and reversal is required.

2. The trial court committed plain error when it deprived Baptiste of his right to an impartial jury when, after discovery that spectators sitting closest to the jury supporting the prosecution were wearing shirts displaying a photograph of the decedent, it failed to voir dire the jury to assess the impact or declare a mistrial. Reversal is now required.

STATEMENT OF FACTS

In the afternoon of March 31, 2021, James Fibelkorn (“Fibelkorn”) was heading westbound on Route 14 in Milford, Kent County, Delaware. A117. Fibelkorn witnessed a sedan accelerating at very high-speed approaching him in his rearview mirror. As the vehicle became closer, a blue SUV caught up to the sedan in the passing lane, until it was parallel to the sedan. A125. Fibelkorn testified that he saw an arm extend out from the passenger window of the SUV and heard approximately five or six gunshots. A119. He noticed the female driver of the sedan directly behind him fall forward and the car veer in to a field off the highway. A120. Fibelkorn was unable to see or identify anybody from the vehicle from which the shots were fired. A121. He immediately did a U-turn in an effort to obtain information from the SUV and called 911. A127.

Another driver, Michael Allaband (“Allaband”), also witnessed the incident in question. Allaband testified that at approximately 3:10 p.m. he was headed westbound on Route 14 towards Harrington when a silver sedan passed him at high speed followed by the blue SUV, matching the description given by Fibelkorn. A65-66. According to Allaband, a few seconds after the vehicles had passed him, he heard “a few loud pops” and witnessed the silver sedan veer off the road into the field. A66. Allaband and other bystanders

approached the silver sedan in the field and realized that the driver had been shot. A66. According to Allaband, while he was at the scene, a dark colored vehicle stopped and three occupants exited but only one approached the car. This unidentified male shouted out to the shot driver and it appeared to Allaband that he knew the victim. A69. After dropping a cigarette lighter at the scene, he then got back into their vehicle and fled eastbound towards Millford. A70.

At 3:13 p.m. on the day in question, police were dispatched to the scene following reports of a vehicle crash and possible shooting. A55. EMS arrived shortly thereafter and transported the female victim, later identified as Maricruz Sanchez (“Sanchez”) to Kent General Hospital. On April 2, 2021, Sanchez was pronounced dead as a result of gunshot wounds. A392. Following an autopsy, the cause of death was ruled a homicide. A402.

Police began collecting evidence from the scene. In the victim’s purse, along with her ID, was the ID of Khaliell Pitts (“Pitts”). He was later identified as the victim’s boyfriend and father of her two children. A59; A89. A cell phone was collected from her vehicle. A182. Ten shell casings from a .45 caliber weapon were also recovered. A158; A162. In addition, the cigarette lighter was also recovered. A145. The lighter and shell casings were processed for fingerprints and none were recovered. A146. Additionally, the casings and

lighter were swabbed for DNA but were never submitted for testing. A150. Furthermore, police did not conduct any fingerprint or DNA testing from the interior of Sanchez's vehicle. A204. No weapon in connection with this crime was ever recovered.

Police extracted data from the cell phone collected from the victim's vehicle and determined that three video calls through Facebook Messenger were made with her boyfriend, Pitts, moments prior to the shooting. A242. Despite Pitts being positively identified as the man who approached the victim after the shooting, he refused to cooperate with police with regards to the investigation. Additionally, at the time of this incident, Pitts was already a suspect in a shooting complaint in the early morning hours of March 31, 2021 in Millford Delaware. A266. According to police, Pitts shot an individual named Tayone Matthews through the arm. Pitts was the main suspect but was never arrested for this shooting. A404-405.

As part of the investigation, police obtained surveillance camera footage from both residences and businesses along Route 14. A85; A89. The footage assisted police in identifying the blue SUV as a 2021 Nissan Rogue Sport with Pennsylvania tags. A259. The vehicle was rented at Enterprise Rent-A-Car in Dover, Delaware on March 29, 2021 and returned on April 6, 2021. A270. The vehicle was rented by Anthony Simpson ("Simpson"). He

was the only individual listed as renter and driver on the contract. A280-81. Simpson's older cousin, Christopher Harris ("Harris"), testified that Simpson rented the vehicle on his behalf for his daughter, Christina, and her boyfriend because Harris did not have a credit card with which to pay for it. A289-90. Harris testified that Baptiste was dating Christina at the time, however he did not know him and had only seen him a couple of times. A297. A material witness warrant was issued for Christina and she failed to appear for trial and testify. D.I. #37.

Given the lack of physical or forensic evidence, the State's case depended solely on the testimony of Lorenzo Williams ("Williams") and Ricky Hicks ("Hicks"), two jailhouse informants. Williams had an extensive criminal history and was serving an eight-year sentence at the time of trial. A331. His criminal history included: arson second degree, burglary second degree, burglary third degree, theft from a senior, unlawful use of a credit card, theft under false pretenses and shoplifting. A336-37. Hicks' criminal history included sexual solicitation of a child, rape fourth degree, trafficking cocaine, delivery of cocaine and possession with intent to deliver. A450.

Prior to trial, Williams entered into a cooperation agreement with the State in which the State would file a Substantial Assistance Motion requesting the court consider a sentence reduction if Williams provided assistance in this

case. A332. In addition, three days after Hicks spoke to investigators, his attorney filed a motion to modify his sentence. A468. That motion was granted and Hicks's sentence was reduced from Level 4 to Level 3. A471.

During his testimony, Williams stated that in January 2022, he was housed at Sussex Correctional Institution ("SCI") in the same housing unit as Baptiste and Hicks. A336. Williams and Hicks both testified that Baptiste had confessed to them that he had been the driver of the vehicle involved in the shooting of Sanchez. A339; A454-55. According to Williams, Baptiste stated that James Eley was the shooter and Pitts was the intended target. A486-487. Williams stated that Hicks asked him if he would corroborate his statement to police and advised him that it could have a positive impact on his own case and sentence. A366.

On cross-examination, defense counsel pointed out weaknesses and inconsistencies in both Williams' and Hicks' story and credibility. For example, Williams testified that he had known Hicks for a few years and the two were friends during his time at SCI. A363. However, Hicks testified that he and Williams were not friends and did not even meet Williams until the time Baptiste allegedly confessed. A476. Williams testified that he did not speak with police until approximately three months after hearing the alleged confession from Baptiste. A362. Williams admitted that during his interview

with police the detective acknowledged that he knew Williams wanted help with his case in exchange for cooperation. Williams told police that he “really wanted to be in contact with his four-month-old son”. A367.

Hicks meanwhile testified that he did not come forward about Baptiste for approximately six months after hearing the alleged confession. A474. Hicks admitted that during his interview with police he acknowledged that his brother had cooperated with police in the past and it had been to his benefit. Thus, he was now expecting the same for himself. Hicks further admitted about asking the detective during the interview about receiving a “Crime Stopper’s Reward” based off the information provided. A477. Hicks admitted that one of his motivations for coming forward was that he did not want to lose his son, Tayone, who was a potential suspect in the shooting of Sanchez. A478-49. Hicks also told detectives that Baptiste confessed that his mother rented the vehicle, allegedly used in the shooting, despite the aforementioned evidence to the contrary. A457.

Detective Grassi (“Grassi”) was the officer who interviewed both Hicks and Williams in connection with this case. Grassi testified that three press releases were released to the public prior to Baptiste’s arrest in December of 2022. A414. On cross- examination, Grassi acknowledged the information that was known to the general public included: identification of the victim and

her photo, the nature and location of the crime, the description of the vehicles involved and photos of the suspect's vehicle, the cause of death and that it was being treated as a targeted homicide. A416-17. Grassi also admitted that during the investigation, police had received information from members of the public regarding details of the crime. For example, in April 2021 the public already knew a rental vehicle was used in the crime and that Sanchez was on the phone immediately prior to the shooting. A420. Grassi further acknowledged that police received tips that placed Tayone Matthews, Hicks' son, in the suspect's vehicle. A425. Additionally, police received tips with more names as potential suspects in the vehicle. These included James Eley, his identical twin brother Semaj Eley, and Antoine Holden. A426.

I. IT WAS JUDICIAL ERROR TO DENY DEFENSE MOTION FOR JUDGEMENT OF ACQUITTAL ON THE CHARGE OF MURDER FIRST.

Question Presented

Did Trial Judge commit error when he denied defense Motion for Judgement of Acquittal in light of the fact the only evidence presented was prison snitch testimony and a record completely devoid of physical evidence? The issue was preserved by an oral Motion for Judgement of Acquittal. A525.

Standard and Scope of Review

The Supreme Court reviews de novo a denial of a motion for judgement of acquittal. *Priest v. State*, 879 A.2d 575 (Del. 2005).

Argument

Given the almost total absence of any reliable evidence linking Baptiste to the shooting, at the close of the State's case-in-chief, defense counsel moved for Judgement of Acquittal on the charge of Murder in the First Degree as alleged by Count 1 in the indictment. A525. Baptiste accepted that the State presented evidence that a crime was committed, however he challenged the element of identity given that the testimony of two jailhouse informants was not corroborated by any forensic or physical evidence. A526. The trial court denied the Motion from the bench. A528. In light of the State's weak case

against Baptiste, it is impossible to conclude that any reasonable jury could have convicted him of the charge set forth in the Indictment based upon the evidence presented at trial. Accordingly, the trial court should have ordered the entry of a judgment of acquittal in Baptiste's favor, and the failure to do so was reversible error.

The testimony of Williams and Hicks, two jailhouse informants, became the linchpin of the State's case, even though none of their statements possessed any independent indicia of reliability. Without Williams and Hicks' testimony the State would not have been able to convict Baptiste. The testimony of each of these individuals is riddled with problems and issues rendering it totally insufficient to sustain Baptiste's conviction. Both of these individuals all had fairly lengthy criminal records that evidenced their own long-standing disregard for society's rules. A336-37; A450.

Further, they each had cases pending at the time of Butler's trial, and provided their "information" to authorities within the framework of a cooperation agreement pursuant to which they agreed to testify against Baptiste in exchange for favorable treatment in their own respective criminal matters. A332. As a result of these agreements and the accompanying trial testimony, they each received substantially reduced prison sentences. A471. Further, the record reflects that Williams and Hicks may have colluded in

providing their respective statements to Detective Grasso, and Hicks was motivated, at least in part by the prospect of receiving a “Crime Stopper’s Reward” and ensuring that his own son was not implicated for the crime. A366; A477-479. Finally, the testimony of each of these witnesses was missing crucial details and riddled with inconsistencies. A410; A363; A457; A476.

Jailhouse Informants are Presumptively Unreliable. The testimony of a prison informant, who has been compensated by the government to deliver favorable testimony in a criminal prosecution, is inherently untrustworthy. *Banks v. Dretke*, 540 U.S. 668 (2004).¹ “The most dangerous informer of all is the jailhouse snitch who claims another prisoner confessed to him.” See, Stephen S. Trott, *Words of Warning for Prosecutors Using Criminals as Witnesses*, 47 Hastings L.J. 1381 (1996). “[A]nyone remotely associated with the criminal justice system recognizes that there are problems using witnesses who trade testimony for leniency.” Peter A. Joy, *Brady and Jailhouse Informants: Responding to Injustice*, 57 Case W. Res. L. Rev. 619, CWRLR (2007). “Jailhouse snitch testimony is notoriously unreliable, with inmates often manufacturing supposed confessions from others ... in return for lenient

¹ “[I]nformers, accessories, accomplices, false friends, or any other betrayals which are ‘dirty business’ may raise serious questions of credibility.” *Lee v. United States*. 343 U.S. 747, 757 (1952).

treatment or other benefit.” *Id.* “Cooperation or immunity agreements [], as well as communications with the compensated witness, are discoverable fodder for questioning by opposing counsel to establish bias.” George C. Harris, *Testimony for Sale: The Law and Ethics of Snitches and Experts*, 28 Pepp. L. Rev. 1 (2000). Moreover, commentators have observed the correlation between the use of informant testimony and wrongful conviction. It is estimated that “45.9 percent of documented wrongful capital convictions have been traced to false informant testimony.” *See* Alexandra Natapoff, *Beyond Unreliable: How Snitches Contribute to Wrongful Convictions*, 37 Golden Gate U. L. Rev. 107, 107 (2006-2007).

The State presented a case with many problems. The State’s evidence in this case was feeble at best. There was no weapon, no motive, no eyewitness identification, and no physical or forensic evidence that linked Baptiste to this offense. Instead, all the incriminating testimony came from two jail house informants who received very favorable outcomes to their own legal problems from pointing the finger at appellant. Experience teaches that absolutely flawless evidence rarely is available for either side in any case. In the matter at bar, the State's evidence against Baptiste was so imperfect that the motion of defense counsel for a judgment of acquittal should have been

granted, and the trial court's failure to do so was reversible error. Accordingly, Baptiste's conviction must now be vacated.

II. THE TRIAL JUDGE FAILED TO ENSURE DEFENDANT'S RIGHTS TO A FAIR AND IMPARTIAL JURY, DUE PROCESS AND CONFRONTATION, WHEN THEY FAILED TO VOIR DIRE THE JURORS OR DECLARE A MISTRIAL AFTER SPECTATORS SUPPORTING THE PROSECUTION WORE SHIRTS TO COURT DISPLAYING A PHOTOGRAPH OF THE DECEDENT.

Question Presented

Does a trial court deprive a defendant of his right to an impartial jury when, after discovery that spectators sitting closest to the jury supporting the prosecution are wearing shirts displaying a photograph of the decedent, they fail to voir dire the jury to assess the impact or declare a mistrial? Del. Sup. Ct. Rule 8.

Standard of Review

“Under the plain error standard of review, the defect complained of must be so ‘prejudicial to substantial rights’ that it ‘jeopardize[s] the fairness and integrity of the trial process.’ Claims of error implicating constitutional rights of a defendant are reviewable notwithstanding their nonassertion at trial.” *Winters v. State*, 858 A.2d 961 (Del. 2004) (quoting *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).

Argument

On the third day of trial, during a recess, the court staff brought to the trial judge’s attention that “folks on the prosecution side, there’s a number of

them wearing T-shirts with the victim's picture on it." The court acknowledged noticing the same thing and declared that "they certainly do not have the right to adversely impact the presentation of evidence or try to improperly influence the jury." A373. After seeking advice from counsel on how to proceed, Defense counsel expressed concern over the impact of influence given that the spectators were seated closest to the jury and it was sympathetic case. A373-74.

The court ruled that the spectators would no longer be permitted to wear the shirts with the decedent's picture during the proceedings moving forward. The court stated that "the jury is to make a decision based only on the evidence presented in this case." It further found on the record "that the shirts that the individuals are wearing does lead into an outside influence that the Court is not going to permit." A376. The court took no further action.

When spectators wear shirts displaying an image of a crime victim, there is a strong possibility that their actions will undermine several fundamental rights of a criminal defendant. First, they undermine an accused's rights to a fair trial by an impartial jury and due process guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, Section 7 of the Delaware Constitution. *Banther v. State*, 823 A.2d 467, 481 (Del. 2003). Including his or her right "to have his guilt or innocence

determined solely on the basis of the evidence introduced at trial, and not on ... other circumstances not adduced as proof at trial.” *Holbrook v. Flynn*, 475 U.S. 560, 567 (1986) (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978)).

A number of courts and writers have concluded that trial spectators should not be permitted to wear shirts, buttons or ribbons supporting a crime victim. *See, e.g., People v. Nelson*, 53 N.E.3d 691, 699 (N.Y. 2016); *State v. Speed*, 961 P.2d 13, 30 (Kan. 1998); Sierra Elizabeth, *Note: The Newest Spectator Sport: Why Extending Victims' Rights to the Spectators Gallery Erodes the Presumption of Innocence*, 58 *Duke L.J.* 275 (2008); Scott Kitner, *Note: The Need and Means to Restrict Spectators From Wearing Buttons at Criminal Trials*, 27 *Rev. Litig.* 733 (2008); Meghan E. Lind, *Symposium: Redefining International Criminal Law: New Solutions: Hearts on Their Sleeves: Symbolic Displays of Emotion by Spectators in Criminal Trials*, 98 *J. Crim. L. & Criminology* 1147 (2008).

Spectators wearing a photograph of a victim convey a message to jurors to find the defendant guilty. *See, e.g., Nelson*, 53 N.E.3d at 830; *State v. Lord*, 165 P.3d 1251, 1265 (Wash. 2007); *Overstreet v. State*, 877 N.E.2d 144 (Ind. 2007) (citing *Carey v. Musladin*, 549 U.S. 70, 82-83 (2006) (Souter, J., concurring)); Lind, 98 *J. Crim. L. & Criminology* at 1158-59. As Justice Souter explained in his concurring opinion in *Carey*, 549 U.S. at 82-83:

[O]ne could not seriously deny that allowing spectators at a criminal trial to wear visible buttons with the victim's photo can raise a risk of improper considerations. The display is no part of the evidence going to guilt or innocence, and the buttons are at once an appeal for sympathy for the victim (and perhaps for those who wear the buttons) and a call for some response from those who see them. On the jurors' part, that expected response could well seem to be a verdict of guilty, and a sympathetic urge to assuage the grief or rage of survivors with a conviction would be the paradigm of improper consideration.

As Justice Souter noted, *supra*, spectator messages are intended to invoke sympathy for crime victims and their families. New York's highest court has held, the display of images of a deceased victim “may be viewed by the jury as an appeal to sympathy for the deceased victim and the spectators wearing the display, and perhaps as a request to hold the defendant responsible for their loss.” *People v. Nelson*, 53 N.E.3d 691, 697 (N.Y. 2016) (prohibiting spectator displays of a deceased victim's photograph during trial). When trial spectators convey a message that the defendant should be convicted, it deprives a defendant of his right to have his verdict determined solely on the evidence. *Woods v. Dugger*, 923 F.2d 1454, 1455 (11th Cir. 1991).

Spectator demonstrations can bias a jury in many ways. First, spectator displays are a distraction because jurors' minds may focus on the spectators' clothing and message rather than the testimony. 58 Duke L.J. at 304. Second, the spectator display may act as a prime for subsequent decision-making behavior. *Id.* at 305. Spectators who visibly display their goals, such as

convicting the defendant, can prime certain members of the jury and, in turn, unconsciously alter their behavior. *Id.* at 306. Finally, spectator demonstrations disrupt the balance of the courtroom. *Id.* Balancing is not only equitable, but also combats the “availability heuristic” - the notion that a judgment can be influenced by the ease with which something is brought to mind. *Id.* at 307. If spectators' displays are allowed, jurors may disproportionately recall the hurt and devastation of the victim and their family, which may in turn diminish the jurors' ability to remain impartial. *Id.* at 308.

In the present case, the court failed to voir dire the jurors to assess the impact of the spectators to influence their verdict. On day three of trial, the judge learned from the court staff that prosecution supporters sitting directly in front of the jury were wearing shirts with the decedent's face. The record is silent on how many total individuals wore the prohibited clothing and for how many days prior to being noticed by the court. Here, where spectators first wore shirts memorializing the victim after the jury had been empaneled, it was essential that the court conduct a mid-trial voir dire in order to determine exposure and impact. At a minimum, a voir dire was essential in light of the aforementioned ways in which spectators' displays may undermine a defendant's fundamental rights. *See State v. Bey*, 112 N.J. 45 (NJ. 1988), and

State v. Loftin, 191 N.J. 172, 193-94 (NJ. 2007)(New Jersey Supreme Court noted the necessity of a voir dire where jurors have been exposed to external influences that could undermine their impartiality).

Here, there was no doubt that the jurors were exposed to a message conveyed on the shirts of trial spectators who were supporting the victim and prosecution, as the court pointed them out. These shirts were both an appeal to sympathy and to convict Baptiste. Since there was confirmation of such exposure, the court should have questioned those jurors individually in order to establish whether they were capable of fulfilling their duty to judge the facts in an impartial and unbiased manner, based strictly on the evidence presented in court. If they could not, a mistrial would have been the appropriate remedy. The court failed to fulfill its obligation to ensure that it did not deprive Baptiste of a fair trial. Because the judge did not engage in a probing voir dire, he failed to develop a proper record. The spectators may have worn the shirts to previous trial proceedings.

Because Baptiste's jurors were exposed to spectator conduct designed to invoke sympathy and a conviction, there was a strong risk that he was deprived of his rights to a fair trial, due process, the presumption of innocence, and confrontation. *U.S. Const.* amends. VI, XIV; *DE. Const.* art. I, VII. Whether or not the federal constitution requires a reversal, such a result is

appropriate under the state constitution. In the same way that many state constitutions have been interpreted by state courts to provide greater protections than the federal Constitution, this Court has held that the Delaware Constitution provides individuals with greater rights in some areas than those afforded by the United States Constitution.² "For example, we have held that the Delaware Constitution provides greater rights than the United States Constitution in the preservation of evidence used against a defendant, the right of confrontation, the right to counsel, and the right to trial by jury."³ In *Xenidis v. State*, this Court recognized that Article I Section 7 of the Delaware Constitution contemplates a greater right to confrontation than does the federal constitution.⁴ The *Xenidis* Court also stated that factors such as textual language, legislative

² *Jones v. State*, 745 A.2d 856, 863 (Del. 1999).

³ *Id* at 863 (citing *Hammond v. State*, 569 A.2d 81, 87 (Del. 1989) (preservation of evidence); *Van Arsdall v. State*, 524 A.2d 3, 6-7 (Del. 1987) (confrontation); *Bryan v. State*, 571 A.2d 170, 176 (Del. 1990) (counsel); *Claudio v. State*, 585 A.2d 1278, 1298 (Del. 1991) (trial by jury)).

⁴ *Xenidis v. State*, 212 A.3d 292, 300 (Del. 2019) fn. 33 ("holding that Article I, Section 7 of the Delaware Constitution contemplated a greater right of confrontation than the Sixth Amendment of the United States Constitution"), citing *Van Arsdall*, 524 A.2d at 6-7. ("We do not hold that a reversal of the conviction is automatic under State law whenever cross-examination on bias is improperly restricted, and while we cite significant rulings of federal courts we do not base our decision on federal law.") *Van Arsdall v. State*, 524 A.2d 3, 6-7 (Del. 1987).

history, preexisting state law, structural differences, matters of particular state interest or local concern, state traditions and public attitudes are all instructive in the determination as to whether the Delaware Constitution provides greater protection than the federal constitution.⁵

Alternatively, if the court believes that a hearing will aid its determination by developing a better record regarding the nature of the shirts, whether they were worn more than the one day, whether they were worn by multiple spectators, and whether jurors can recall the impact of the shirts on their deliberations, a remand may be appropriate. *Norris v. Risley*, 918 F.2d 828, 829 (9th Cir. 1990).

⁵ *Id.*

CONCLUSION

For the reasons and upon the authorities cited herein, Adryan Jean-Baptiste's conviction must be vacated.

Respectfully submitted,

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DATED: January 26, 2026