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March 31, 2012

Vol.: 12.1

**OFFICE OF THE PUBLIC DEFENDER**



**COMPENDIUM OF RECENT CRIMINAL-LAW  
DECISIONS FROM THE DELAWARE SUPREME COURT**

**Cases Summarized and Compiled by  
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**DELAWARE SUPREME COURT CASES  
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**MADDOX V. STATE (02/06/2012): FAMILY COURT LACK OF AUTHORITY TO SENTENCE JUVENILE TO ADULT CONSEQUENCES WITHOUT FURTHER REVIEW**

Prior to his 18th birthday, D pled guilty in Family Court to 2 charges. At sentencing, the court extended jurisdiction over D until his 19th birthday and sentenced him to a minimum of 12 months at a level IV juvenile facility, followed by 90 days of aftercare and 12 months of adult probation. D appealed, arguing that Family Court did not have the authority to sentence him, at the outset, to adult probation following his juvenile commitment.

Although in certain circumstances 10 *Del. C.* § 928 permits the Family Court to extend its jurisdiction over a juvenile up to the age of 21, it does not expressly authorize the court to initially sentence a juvenile offender to adult consequences without subsequent review by the court or additional criminal misconduct by D. Because neither of these circumstances can exist at the time an initial sentence is imposed, the court concluded that the General Assembly did not intend for the Family Court to be able to sentence a juvenile to adult probation following his juvenile commitment, without any intervening review or further criminal misconduct by the defendant. The Court concluded that by imposing such a sentence, Family Court had exceeded the scope of its authority. REVERSED and REMANDED

**BROWN V. STATE (02/08/2012): WITHDRAWAL OF GUILTY PLEA**



D entered into a guilty plea on 2 felony charges. He affirmed his satisfaction with his attorney's representation during the plea colloquy and the judge accepted his guilty plea as being made knowingly, intelligently and voluntarily. Before his sentencing, D filed a *pro se* motion to withdraw his plea on the grounds that it was involuntary, he lacked adequate representation, and he had a basis to assert legal innocence. The trial court denied this motion.

On appeal, pursuant to Superior Court Criminal Rule 32(d), the Court required D to demonstrate a fair and just reason for the withdrawal. The Court concluded that D failed to demonstrate that he had not entered the plea knowingly or voluntarily, and that he had

also failed to provide sufficient evidence for a finding of inadequate representation. Instead, it held that he was bound by his answers on the guilty plea form and his sworn testimony during the plea colloquy, absent clear and convincing evidence to the contrary. **AFFIRMED**

### **SCHOFIELD V. STATE, (2/22/12): WITHDRAWAL OF GUILTY PLEA**

D pled guilty to Murder 2<sup>nd</sup> and Robbery 1<sup>st</sup>. A month and a half later, D filed a motion to withdraw his plea and his attorneys filed a motion to withdraw as counsel. The trial court denied D's motion to withdraw his guilty plea. At sentencing, D requested to be represented by original counsel. The judge sentenced him and denied the motion to withdraw as counsel as moot.

On appeal, the Court pointed out that under Super.Ct.Rule.Crim.Pro 32 (d), "the court may permit withdrawal of a plea upon showing by [D] of any fair and just reason" if the motion is made before sentencing. To determine if there is a fair and just reason the trial court must consider the following factors established in *Scarborough v. State*: 1) was there a procedural default in taking the plea; 2) did D knowingly and voluntarily consent to the plea; 3) does D presently have a basis to assert legal innocence; 4) did D have adequate legal counsel; and 5) does granting the motion prejudice the State or unduly convenience the court. None of these factors is dispositive and any one factor can justify relief. In this case, the trial court was correct because D said he entered the plea knowingly and voluntarily and was happy with his attorneys' representation. Also, the judge was not required, contrary to D's claim, to obtain affidavits from counsel. **AFFIRMED.**

### **WEBER V. STATE, (2/21/12): POLICE DUTY TO PRESERVE POTENTIALLY EXCULPATORY EVIDENCE/ OUT-OF-COURT IDENTIFICATIONS**



V was getting gas at a station. D came up to him and grabbed his car keys with both hands, failed then ran off. The attendant called police. When police arrived, V described D. Meanwhile, police had detained D about a block and a half away. They drove V over to him. V was unable to do so. Later, police viewed a surveillance video which revealed

that the assailant was D. D was charged with Robbery 1<sup>st</sup> and Carjacking 1<sup>st</sup>. On appeal, D's conviction of the Robbery was reversed and D was retried on that charge.

On appeal, D claimed that the State had an obligation to preserve the shirt that he wore when he was arrested. They had grabbed the nearest shirt and pants because D was not dressed. Police said it was just a coincidence that the blue shirt may have been the one he wore during the crime. In any event, there were no identifying characteristics on that shirt or that seen on the blue shirt in the video. Thus, the shirt would actually cement his guilt. Because police had no basis to believe the shirt exculpated D, they had no duty to preserve it. Even so, D did not suffer prejudice so he was not entitled to missing evidence instruction. Photos were introduced which would allow D to argue that the shirt of the assailant was not blue. All other evidence was sufficient to support D's conviction.

D also claimed that the out-of-court identification of D was impermissibly suggestive and unreliable. D claimed that the officer was "conditioned" to see D in the gas station's video because he knew D had been arrested nearby. The Court noted that an impermissibly suggestive id procedure in and of itself does not require exclusion of evidence. Under *Neil v. Biggers*, "[i]t is the likelihood of misidentification which violates D's right to due process." So, the ultimate question was whether the id was reliable. Here, the risk of suggestion was negligible. V did not id D in the process; the officer came in contact with D in his capacity as a police officer and had been familiar with D for over 20 years. The id was not unreliable: good lighting when officer observed D's characteristics shortly after crime; made id less than 24 hours; officer was familiar with D before making the id.

D raised several other issues which the Court summarily dismissed as having no merit. AFFIRMED.

### **WHEELER V. STATE, (2/7/12):RIGHT TO CONFRONTATION/ INDIRECT HEARSAY**



V lived with his girlfriend and her kids. D was the boyfriend of one of the kids, W1. D and V did not get along. One day, V was in the kitchen with W2 when D came up behind V and shot him several times saying that he did not like him very much. D fled. When W1 came into the kitchen W2 said, D "just shot Herbie – Mr. Herbie." Police arrived and took recorded statements of W1 & W2. Following a lead, police went to the apartment house owned by W3. D was not there but police conducted an unrecorded interview of W3. D was later arrested.

At trial, V id'd D, testifying, "I seen his face. I seen the gun." V also said that he heard D shout, "I really don't like you." V also testified that after W1 came into the kitchen, W2

said, “Daemont just shot Herbie – Mr. Herbie.” Over objection, trial court said the statement was a present sense impression and excited utterance. The State introduced out-of-court statements of W1, W2 & W3, all of whom were unavailable to testify. W2 was with V when shooting occurred. W1 was in the basement and W3 was not at the crime scene. Statements of W1 and W2 were taken about 2 hours after the shooting in a police car outside the house. W3’s statement was taken later. The prosecutor asked detective, if after interviewing W1, W2 and W3 he had any reason to think anyone other than D was a suspect. The detective said he did not.

On appeal, the Court found that W2’s statement was a present sense impression because it was made immediately after the event. It was an excited utterance because W2 was under stress of excitement which was caused by the event or condition. With respect to detective’s testimony, the Court concluded that the prosecutor’s attempt to avoid the hearsay rule by not asking directly what the witnesses said and asking indirectly, it was “a distinction without a legal difference for purposes of a hearsay analysis.” The testimony was classic example of indirect hearsay. Because the testimony was offered for the truth of the matter asserted, it was a violation of the hearsay rule.

The Sixth Amendment prohibits the “admission of testimonial statements of a W who did not appear at trial unless W was unavailable to testify, and D had a prior opportunity to cross examine. The Court concluded that *Crawford* does not address or undermine the principle that in-court testimony could trigger confrontation concerns by describing, but not quoting, an out-of-court statement that would otherwise come within the confrontation clause. Considering the characterization of the statements made in closing argument, a reasonable juror could have only concluded that each of the 3 non testifying W’s id’d D as the person who shot V. However, harmless error because D was well known to V and his eyewitness id was compelling. Additionally, W2’s excited utterance was properly admitted into evidence. Thus, improper evidence was only cumulative. AFFIRMED.

### **BROOKS V. STATE, (2/23/12): ACCOMPLICE-TESTIMONY INSTRUCTION**

Two cases were consolidated on appeal in order to address whether failure to instruct the jury on the credibility of accomplice testimony is plain error and what specific language should be given in such an instruction. In both cases an accomplice testified. D1 did not request a *Bland* instruction, [accomplice-testimony instruction], however, the judge did give a model instruction. The Court did not find plain error because, as the law was at the time, the judge provided a proper instruction that had been upheld in 2 prior cases. D2 did not request an accomplice-testimony instruction. Nor did the judge provide such an instruction. The Court reversed his only conviction that included an element entirely reliant upon accomplice testimony.

Due to the complicated nature of this area of the law in Delaware, the Court overruled cases that permit deviation from *Bland*. The Court set forth with specificity the precise instruction that must be given whenever a W who claims to be an accomplice testifies. “Trial judges must give a modified version of the instruction recommended in *Bland v.*

*State* whenever a self-identified accomplice testifies.” AFFIRMED IN PART, REVERSED IN PART

**FRENCH V. STATE, (2/28/12): HABITUAL OFFENDER STATUTE**

W1 & W2 looked out the window of a school and saw a small crowd of people pushing and shoving. The W’s saw a man leave the crowd and return with what they believed to be a gun. W’s heard gunshots. Police arrested D and W’s id’d him as the one who got the gun. While D was originally indicted on 9 counts, all but 1 count of PDWBPP were *nolle prossed*. The PDWBPP charge alleged that D was prohibited because of a prior conviction for Maintaining a Vehicle for Keeping Controlled Substances – a non violent felony. At trial, D stipulated that he was prohibited but did not stipulate as to why he was prohibited. Upon a motion to declare French a Habitual Offender, it was established that D had 3 felonies prior to the current PDWBPP. One of these prior felonies was Escape After Conviction – a violent felony.

D argued that because the indictment identified a non-violent felony [Maintaining] as the crime that made him a “person prohibited,” his 4<sup>th</sup> conviction was necessarily not a violent felony. The Court held that “a person becomes a violent felon the first time that person is convicted of one of the statutorily designated violent felonies. Thereafter, the person retains the status of “violent felon” for any future convictions. Thus, D’s conviction of PDWBPP was a conviction of a violent felony and he was properly sentenced under the H.O. statute as he had 3 predicate felonies and the 4<sup>th</sup> or triggering felony was a violent felony. AFFIRMED.

**STAFFORD V. STATE, (3/1/12): MOTOR VEHICLE STOP/SEARCH OF PASSENGER**



Police stopped a car because it had tinted front windows. The driver provided his license and ID card. Because the license was suspended, police sought to determine whether the passenger, D, could drive the car home. Police asked D for ID. He had none and gave the police a name, birthdate and address. After searching DELJIS, police found no information matching that given to them. Police thought the information given to them by D was “probably false.” Police ordered D out of the car and patted him down. A gun fell out of D’s pants pocket. Once he was arrested, police learned that D had given a false name, address and birth date. D was then charged with weapons offenses and criminal impersonation.

On appeal, the Court found that police were justified in patting D down as they had probable cause to arrest him for criminal impersonation at that point. It appears the Court

had concluded that the lack of information in DELJIS matching that which D had given them amounted to probable cause. AFFIRMED [editorial note: D filed a motion to reargue, which is pending as of the publication of this compendium, on the ground that the lack of information in DELJIS is not sufficient for probable cause as it only contains information on those who have some type of State ID]

### **HOFFMAN V. STATE, (3/2/12): SENTENCING**



D was driving with 2 passengers in the car at 3:00 a.m. They were on their way back from a club in Maryland. D crashed the car and 1 of the passengers died. It was determined that the 18 y.o. D had marijuana in her system and a BAC of .157. She had also been texting and calling on her cell phone minutes before the crash and driving between 88 and 93 mph. She pled guilty to Manslaughter. Prior to entering the plea she was arrested twice for alcohol-related offenses. She was sentenced to 9 years in prison after the judge considered as aggravating factors: 1) she did not try to help V; 2) she posted pictures on her MySpace account that glamorized alcohol; 3) she attempted to hide the alcohol after the accident. D filed a motion for modification because the photos were posted before the accident and because she did try to help V. The judge reduced the sentence by a year due to her prior misapprehension of the facts. But, the judge still considered the fact that D never took the postings down. A subsequent motion for reargument to clarify whether the trial court still considered the posting of the photos as an aggravator was never addressed.

On appeal, the Court concluded that the judge properly resolved the issues with respect to relying on erroneous facts for sentencing when she modified the sentence. Also, the judge also understandably cited D's "gross exhibitions of lack of remorse" as a reason to find that anything short of confinement would unduly depreciate the gravity of D's offense in her mind." AFFIRMED.

### **DAVIS V. STATE, (3/13/12):TIMELY FILING OF MOTION TO SUPPRESS**

Police investigated 3 robberies. They identified a person of interest and went to his house and detained everyone therein until they obtained a warrant. D was one of the detainees.

Later, D was taken to police headquarters and interviewed for 2 hours before admitting involvement in the robberies. Prior to trial, the court issued a scheduling order that required that any motion to suppress be filed 20 days after the first case review scheduled on November 22, 2010. However, counsel did not file the motion until February 25, 2011, 2 business days before trial. Counsel sought to explain the delay by citing to various trials and personal obligations that distracted him from this case. The court denied the request to file the motion out of time. At trial, D testified that he only confessed in order to get the questioning to stop. D was convicted.

On appeal, the Court concluded that the trial court had “broad discretion to enforce its rules of procedure and pretrial orders.” Here, counsel did not satisfy his burden to prove the exceptional circumstances that prevented the timely filing. He had been given an additional 10 days beyond the Criminal Case Management plan to file the motion and he did not. The Court noted that D was not precluded from seeking relief under Rule 61. AFFIRMED.

**ROGERS V. STATE, (3/20/12): MURDER 2<sup>ND</sup> INSTRUCTION/ JURY’S POSSIBLE CONSIDERATION OF EXTRANEOUS MATERIAL**

W1 and V were romantically involved. W1 had previously dated W2. W2 rang W1’s doorbell and V came to the door. The two began a fight that led into the kitchen. Suddenly, W1 saw D, who had been waiting outside, rush into the kitchen. W1 heard a gunshot then saw D standing in the doorway with a gun. W1 went upstairs then heard 3 to 4 more shots. When she went back downstairs, she found V lying on the front steps, having trouble breathing. D and W2 fled and V later died. D was charged with Murder 2<sup>nd</sup> and weapons offenses. The jury was instructed Murder 2<sup>nd</sup> and on the LIO of Manslaughter. While both of those offenses require a finding that D “recklessly caused the death of another person,” Murder 2<sup>nd</sup> also requires a finding of “circumstances which manifest a cruel, wicked and depraved indifference to human life.” The judge provided a definition to the jury of that element explaining that the words are given there everyday use. He then provided the more common definitions of the terms. The jury asked for clarification of the terms. The judge told the jury to reread the instruction reminding them to use the common and approved usage. The jury also asked to see the Delaware Online articles referred to in trial. The parties agreed that they could refer to their recollection of the articles but since they were not in evidence, they would not be given to them.

D argued on appeal, under a plain error standard, that the judge erred by providing definitions of the terms, “cruel,” “wicked” and “depraved.” The Court noted that it was appropriate for the judge to clarify the statutory language for the jury and since D did not object it was not plain error. D also argued that because the jury requested “all” of the Delaware Online articles, it was likely that they had some and thus, it was plain error to fail to ask the jury *sua sponte* whether they possessed any of the articles. The Court concluded there was no reasonable basis to infer that the jury had some articles. AFFIRMED.

**ROBERTSON V. STATE, (3/20/12): FLIGHT INSTRUCTION/ LIO INSTRUCTION**



V was intoxicated and went to a Wilmington apartment parking lot looking for drugs. She heard someone in a car call her name. She went over to the car and saw D, an acquaintance, in the passenger seat. W1 was the driver. V leaned against the door and D tugged on her arm. V began to swing her arms at D then realized her arms had been cut as she was bleeding heavily. V walked to a friend's house. She later went for emergency care. D and W1 went to a carwash to get the blood off the car. They did not call police. D testified that V was screaming at her and jumping on the hood of her car before the physical encounter. D said she kept a double blade knife open all the time in that neighborhood. She held her arms up to defend herself but did not realize V was cut until she saw the blood. D was charged with Assault 1<sup>st</sup> and other offenses.

Over D's objection, the trial court issued a flight instruction. On appeal, the Court noted that such an instruction is warranted "where there is evidence of flight or concealment and the evidence reasonably supports an inference that the defendant fled because 'of a consciousness of guilt and a desire to avoid an accusation based thereon, or for some other reason.'" Here, there was sufficient evidence to support the instruction as D left the area, did not call police and never turned herself in. D also claimed that a flight instruction in general violates the Delaware Constitution as a comment on the evidence. The Court concluded that the instruction properly explains the legal significance of the evidence of evasion of arrest and flight.

D also argued that the jury should have been given an LIO instruction on Assault 3<sup>rd</sup>. That offense requires proof of criminal negligence while Assault 2<sup>nd</sup> requires proof of recklessness or intent. To find a defendant criminally negligent, the jury must find that she "failed to perceive a risk" and that failure "constituted a gross deviation from the standard of conduct that a reasonable person would observe in the situation." Here, D claimed the jury could find that D failed to perceive that V was not herself armed with a knife in the darkness of the interior of the vehicle." The Court noted that the defense never presented evidence that D thought V was armed. **AFFIRMED.**