

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAMIAN THOMAS
Petitioner

v.

STATE OF DELAWARE
Respondent

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF DELAWARE**

APPENDIX VOLUME III (A237-A332)

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Dated: December 28, 2022

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

STATE OF DELAWARE :
 :
v. :
 :
DAMIEN THOMAS : No. 1505012411

BEFORE: THE HONORABLE RICHARD R. COOCH,
Resident Judge

TRANSCRIPT OF TRIAL

September 19, 2017

 **COPY**

BONNIE R. ARCHER, RPR
SUPERIOR COURT OFFICIAL REPORTERS
500 North King Street - Suite 2609
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A237

APPEARANCES:

DEPARTMENT OF JUSTICE

BY: ANNEMARIE H. PUIT, ESQUIRE

ERIC H. ZUBROW, ESQUIRE

for the State

OFFICE OF THE PUBLIC DEFENDER

BY: RAYMOND ARMSTRONG, ESQUIRE

EMERY ABDEL-LATIF, ESQUIRE

for the Defendant

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I N D E X

- - -

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Detective Curley				7

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September 19, 2017
Courtroom No. 8C
10:22 a.m.

4 PRESENT:

5 As noted.

6

7 THE COURT: Good morning,
8 everybody.

9 MR. ARMSTRONG: Good morning.

10 MS. PUTT: Good morning.

11 THE COURT: To the State, the
12 status of the State's case?

13 MS. PUTT: Your Honor, we intend to
14 briefly recall Detective Curley for two
15 quick, what I anticipate will be quick
16 matters, and enter the stipulation of fact
17 about the DOC records, then we will rest.

18 THE COURT: All right. Mr.
19 Armstrong, do you know what witnesses, if
20 any, you'll call? You don't have to make
21 that decision, of course, until the State
22 rests its case.

23 MR. ARMSTRONG: I can tell you now,

1 THE COURT: Members of the jury, I
2 hope you had a good evening. During the
3 overnight recess, did anybody discuss the
4 case with anybody?

5 All jurors are continuing to
6 register in the negative. Thank you.

7 The State may continue its case.

8 MS. PUTT: Thank you, Your Honor.

9 At this time, the State would enter the
10 second stipulation of fact, which has been
11 agreed upon by all parties.

12 The State of Delaware and the
13 defendant, Damian Thomas, by and through his
14 attorney hereby stipulate that the defendant,
15 Brandon Lacurts and Robert Johnson were
16 cellmates at Howard R. Young Correctional
17 Institution from November 5, 2016 until
18 November 28, 2016.

19 State's Exhibits 57, 58 and 59 are
20 admissible as documentation of their housing
21 within the Department of Correction, and that
22 has been signed by all parties.

23 At this time, Your Honor, we will

1 we have no witnesses, Your Honor, except —

2 THE COURT: I couldn't hear you.

3 MR. ARMSTRONG: We have no
4 witnesses except if Mr. Thomas decides to
5 testify.

6 THE COURT: Except who?

7 MR. ARMSTRONG: If Mr. Thomas
8 decides to testify.

9 THE COURT: Well, we will have that
10 colloquy after the State rests its case.

11 Please bring in the jury.

12 THE BAILIFF: Yes, Your Honor.

13 MS. PUTT: Your Honor, would you
14 prefer that we call Detective Curley first or
15 enter the stipulation of fact or does it not
16 matter to the Court?

17 THE COURT: Your decision.

18 MS. PUTT: Okay. Thank you. Just
19 so it's clear, we will enter the stipulation
20 and then call Detective Curley.

21 THE COURT: All right.

22 (Whereupon, the jury enters the
23 courtroom at 10:24 a.m.)

1 move those into evidence.

2 THE COURT: Is that Joint Exhibit
3 or State's Exhibit?

4 MS. PUTT: It is State's Exhibit,
5 Your Honor.

6 Your Honor, at this time the State
7 recalls Detective Thomas Curley.

8 THE COURT: You remain under oath
9 from yesterday.

10 THE WITNESS: Yes, Your Honor.

11 MS. PUTT: May I have a moment,
12 Your Honor. Sorry.

13 THE COURT: Yes.

14 REDIRECT EXAMINATION

15 BY MS. PUTT:

16 Q. Thank you. Detective Curley, as
17 part of your investigation, were you able to
18 determine if Damian Thomas had a permit to
19 carry a concealed deadly weapon?

20 A. He was not.

21 Q. Yesterday you spoke about ejection
22 of casings from a gun?

23 A. Yes.

1 attorneys let's all be mindful of Supreme
 2 Court holdings on permissible things to say
 3 in closing arguments.
 4 (Whereupon, the jury enters the
 5 courtroom at 1:16 a.m.)
 6 THE COURT: Ms. Putt, the State may
 7 give its a closing argument in the case.
 8 MS. PUTT: Thank you, Your Honor.
 9 May it please the Court, defense
 10 counsel. Good morning, ladies and gentlemen.
 11 Ask almost any parent, he or she
 12 will tell you that their worst nightmare is
 13 to have one of their children die before they
 14 do. As parents, they're prepared to go
 15 before their children. It's the natural
 16 progression of things.
 17 You already know that Etta Reid had
 18 to live in that nightmare because of that
 19 man, and on April 14, 2015, that man shot her
 20 son in front of her eyes. She watched as the
 21 defendant shot her son in the back. Her son
 22 collapsed into the street. She then watched
 23 as he stood over him and shot him again. She

1 then watched him drag himself over to the
 2 side of the street and call out to his mother
 3 for help.
 4 That's not all she saw. She also
 5 had to watch that man flee. That man, who
 6 moments before, had come up onto her porch,
 7 kissed her and, hey, ma. That same man now
 8 fled right past her after he shot her son and
 9 left him bleeding in the street, a parent's
 10 worst nightmare.
 11 Unfortunately, for Etta Reid, it's
 12 a nightmare from which she never has the
 13 luxury of waking up. This week and last
 14 week, you've heard all the details about what
 15 happened the evening Mutt shot Shannon.
 16 You heard the defendant and Shannon
 17 got into a verbal argument. The defendant
 18 went home, got his gun, came back and ended
 19 that argument on his own terms.
 20 How do you all know what happened
 21 on the 27th Street back on April 2015? You
 22 know that Etta and Shannon lived at that same
 23 house on 27th Street for almost 18 years.

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1 They were very close. They lived together.
 2 Etta told you on April 15, she had worked at
 3 the Country House, where she's work for over
 4 30 years. She came home, went on her porch,
 5 just wanted to relax.
 6 She's sitting outside with Shannon,
 7 when Mutt comes up, kisses her on the cheek.
 8 Hey, ma, and sits down with Shannon.
 9 You also have a video. You're able
 10 to watch Mutt leave Crest View Apartments at
 11 about 9:31, leaves his apartment, walks past
 12 the elevators, past security, and eventually
 13 out the front door.
 14 Where does he go? To Etta's house
 15 to that front porch. You see him on the
 16 video from Pete's parking lot, moments after
 17 he walks out of Crest View, right across the
 18 street.
 19 Detective Curley testified in that
 20 back corner, you can actually see her porch,
 21 go back, watch it. If you look closely, you
 22 can see him up on her porch, but we don't
 23 just know that from the video. We don't just

1 know that from Etta. We know from it from
 2 Taya Cassidy. She says she lives across the
 3 street. She's known Etta and Shannon most of
 4 her life. She stayed home that night. She
 5 had a headache, a migraine, while her
 6 roommate, Star, went out.
 7 She says when she's leaving, Star
 8 is leaving. Taya looks outside, and Mutt is
 9 over there on the porch. Etta, video, Taya.
 10 We also know that when Shannon is
 11 on the porch, he's texting with his
 12 girlfriend, Sarah Broadnax, heard from her on
 13 the stand. She told you, they were having a
 14 disagreement because Shannon wanted to see
 15 his new baby, Sariah. She had fallen asleep
 16 and hadn't brought him over. She tells you
 17 that she's on the porch - she's not on the
 18 porch, that she's on the phone. Shannon is
 19 aggravated. She can hear somebody in the
 20 background.
 21 She hears Shannon say to that
 22 person, I gotta worry about my daughter right
 23 now. Shannon bushes Mutt off, and he leaves.

1 That's what Etta tells you. They have a bit
 2 of a disagreement, and he leaves. How do we
 3 know he leaves? Because you see him on
 4 video. You see him from the Pete's Pizza
 5 video.
 6 About three minutes after he's
 7 walked up onto her porch, he now walks back.
 8 Where does he walk back? To Crest View. How
 9 do we know? It's on video.
 10 Just at about 9:36, Mutt is walking
 11 through the front doors of Crest View, top
 12 left-hand corner. He walks in. You can now
 13 see him in the bottom left corner. I want
 14 you to focus on the bottom right. Hands over
 15 something to the security guard, signs him
 16 in.
 17 Ladies and gentlemen, you look at
 18 that video closely. You can see the security
 19 guard signing him in on the sign-in sheet.
 20 When he's able to get his ID back, he jolts
 21 for the door. He is he now able to go
 22 through the open doors, up through the right,
 23 up again in the right-hand corner, past the

1 elevator doors, to Stett Maye's apartment,
 2 Number 101.
 3 How do we know? Because we see him
 4 on video.
 5 Right-hand box, 9:37, he knocks on
 6 the door. He gains entry about 9:37:27. How
 7 long is he in there? About 30 seconds. How
 8 do we know? It's on video.
 9 Thirty seconds, long enough for him
 10 to walk in, grab a gun and walk back out.
 11 Here he is leaving at 9:38, back past the
 12 elevators, back past security, back out that
 13 front door. How do we know that he's up
 14 there again? We saw him on video. You also
 15 see the sign-in sheet. 9:38, leaves at 9:38.
 16 Pay attention to the security
 17 guard. Like I said before, you will see him
 18 sign him out. Puts his glasses back on,
 19 signs him out.
 20 Where does he go? Etta tells you.
 21 He comes back, comes back to her house to
 22 argue with Shannon. How do we know? Etta
 23 tells you, and it's on video. Right past

1 Pete's.
 2 How else do we know he's out there?
 3 Tays doesn't just put him out there when she
 4 sees -- when her friend are leaving. She
 5 also says she sees him out there arguing with
 6 Mutt later -- I mean, with Shannon later.
 7 What happens when they come back?
 8 We know that they start arguing again. Etta
 9 tells you. Voices are raised. Shannon's
 10 hands are in the air. They are angry.
 11 Shannon says, I ain't got nothing for you.
 12 We can go right now. Tays says she can hear
 13 Mutt and Shannon arguing, arms are up waving
 14 in the air. Shannon says something about
 15 coming up short.
 16 Heard all the testimony, Mutt
 17 wanted some drugs. He's always coming up
 18 short. Shannon didn't have it and didn't
 19 have time for him right then.
 20 He's in a fight with his
 21 girlfriend, Sarah, wants to see his baby.
 22 Wants him to back off.
 23 They walk off the porch. They are

1 walking up 27th, on the sidewalk near 27th --
 2 on 27th near Moore. They are moving westward
 3 up the street.
 4 Etta, Tays and Monique all point
 5 that Mutt and Shannon are in the vicinity of
 6 the corner of Moore and 27th Street. All
 7 three of them can say what is happening from
 8 their various positions because of the
 9 lighting out there on the street,
 10 specifically they reference the street light
 11 over 27th and Moore.
 12 Detective Curley tells you he's out
 13 there moments after it happens, and he's able
 14 to look from Market to Tainell, not to Moore,
 15 not that cutoff street or however we referred
 16 to it, the street that intersects where
 17 everything happens, the next street up he can
 18 see.
 19 By all accounts, Mutt starts to
 20 walk away from -- Shannon starts to walk away
 21 from Mutt. What happens next? Mutt shoots
 22 him. Tays says she can see him reach into
 23 his waistband for his gun, pulls it out,

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1 extends his arm. Tave says he extends his
2 arm. Etta says he extends his arm. Both
3 hear the gun go off. Etta sees smoke from
4 the gun. Tave says she sees a muzzle flash.
5 Shannon falls to the ground.

6 At that point, Tave runs from the
7 window where she's watching, screaming
8 Shannon was shot. She doesn't see what
9 happens after that because she's running
10 downstairs. She's emotional. She doesn't
11 see anything until she get back downstairs.
12 Shannon Reid is on the ground dying.

13 Etta tells you what she saw. She
14 sees Mutt stand over him and fire again.
15 Mutt stands over him, over Shannon, and
16 fires.

17 How do we know how many shots are
18 fired? Because look, Tave says she hears two
19 before she goes away. Etta says she hears
20 three. Witnesses hear different amounts.

21 We know Mutt fired four times. How
22 do we know that? You know he fires four
23 times, and he strikes Shannon twice. We know

1 autopsy.

2 What happens after he's shot? We
3 know that Shannon was able to drag himself
4 back over in front of house number five,
5 where he collapsed in the street. Etta tells
6 you that's where he is when he's screaming,
7 asking for her help and saying call 911, call
8 911. That's where Tave sees him laying in
9 the street when she get back down from -- to
10 her door.

11 That's not all. It's not just Tave
12 and Etta. It's where Officer Brown sees him
13 when he gets there, where he chalks his body
14 in front of the house.

15 Now, ladies and gentlemen, the
16 State anticipates Mr. Armstrong is going to
17 discuss the inconsistencies in Etta, Tave and
18 Monique's statements, talk about the
19 inconsistencies in the distance of how far
20 they were and where exactly they were in the
21 street.

22 He's going to talk to you about
23 Monique. Monique was emphatic that she was

1 it. You can't see that. That is the crime
2 scene. If you look here, you can see it.
3 That is the crime scene sketch which is in
4 evidence.

5 And Officer Nagowski talked about
6 doing that crime scene sketch, and he talked
7 about finding four casings, the outer part
8 that covers the projectile. Four shot are
9 fired. One, two, three, four.

10 We know that Mutt struck him twice
11 from Dr. Collins. Dr. Collins talked to you
12 about how the bullets entered Deshannon's
13 body. The first bullet entered Shannon's
14 rear end and exited through the front of his
15 penis. The second bullet, Dr. Collins
16 testified he doesn't know what shot came
17 first. That's just how he numbered it in his
18 report.

19 The second bullet entered his back,
20 traveled through his body and became lodged
21 in his chest, causing massive damage to his
22 internal organs. The projectile that was
23 lodged in his chest was recovered during his

1 out there. You heard Mr. Armstrong question
2 her about her time at Hazel D. Plant Center.

3 You are going to be instructed that
4 you will be the sole judges of the
5 credibility in this case. Judge Cooch is
6 going to read to you instructions. He's also
7 going to give you copies of those
8 instructions. You will see that instruction.

9 It's your job to judge the
10 credibility. You give credit where you
11 choose, and if you believe Monique, now
12 you've heard four people say that Mutt shot
13 Shannon, but if you aren't sure she was
14 there, it doesn't matter because there's
15 still three people telling you that Mutt shot
16 Shannon: Etta, Tave and Mutt, through
17 Brandon Lacurta.

18 You will get the inconsistencies
19 that Mr. Armstrong is going to talk to you
20 about. I want you take a step back and look
21 at the big picture. They are all telling you
22 the same story. They are all tell you that
23 Mutt shot Shannon out at the corner of 27th

1 and Moore on April 15, 2015.
 2 Etta Reid tells you he's out there.
 3 Sarah Broadnax tells you there's an argument.
 4 We've got numerous videos from Crest View and
 5 Pets's, where he's walking back and forth.
 6 Leantaye Cassidy puts him out there,
 7 consistent.
 8 Let's look at what they are
 9 consistent about. April 14, 2015, it's dark
 10 outside. Nobody is contesting that it's dark
 11 outside. It's almost 10:00 at night.
 12 Shannon is on his phone distracted by another
 13 conversation. Mutt and Shannon get into an
 14 argument. They are raising their voices.
 15 Shannon is raising his hands in the air. The
 16 argument is over drugs and money. All these
 17 people are telling you this. They carry on
 18 their argument in front of number five on
 19 27th Street, near a street light at the
 20 corner of Moore.
 21 Shannon is closest to Moore, and
 22 Mutt is behind him. Shannon goes to walk
 23 away. Mutt extends his arm. Mutt shoots

1 him. They all hear the shots. They either
 2 see a flash or smoke from the gun. Shannon
 3 falls to the ground. Shannon crawls or drags
 4 himself back in front of number five. That's
 5 what they tell you. All of these people have
 6 seen something horrific, something that was
 7 sudden, something that was upsetting.
 8 happened quickly.
 9 Their viewpoints are all different.
 10 Etta is standing on his porch. Tays is up at
 11 her house. Monique is down the street. They
 12 all had different perspectives.
 13 Is it surprising to you that
 14 there's minor inconsistencies? What if all
 15 three of them had gotten up there and said
 16 the same exact thing, no inconsistencies,
 17 parroting one another. Where would that lead
 18 you?
 19 Think of it this way. Imagine you
 20 are going to a store to buy a leather jacket,
 21 Macy's, Nordstrom, your choice, your store.
 22 And I'm talking about a real leather jacket,
 23 the expensive kind, the kind with the tag on

1 it that if you walk out of the store without
 2 paying, it's going to go off because it's
 3 expensive because it's real. It's the kind
 4 that's actually made from the hide of an
 5 animal.
 6 You go shopping for one of those
 7 jackets, and you are looking through the
 8 racks. Every single one of those jackets has
 9 the same blemish on the left sleeve. Every
 10 one has a little circle on the left sleeve.
 11 They are all consistent.
 12 What does that tell you? It tells
 13 you those jackets are fake. They are not
 14 real leather. Each jacket would be a little
 15 bit different because they are not made in
 16 some shop where it's one thing after the
 17 other. They are real leather made from that
 18 animal.
 19 Those inconsistencies, ladies and
 20 gentlemen, are the marks of the authenticity,
 21 just like in this case.
 22 Just like we have here, our
 23 witnesses are viewing things from different

1 angles, different perspectives.
 2 You saw that map up there. First,
 3 you saw how hard it is to use that map.
 4 Detective Curley, Detective Puit, myself,
 5 Etta, Tays, Monique, nobody had an easy time
 6 with that map. There's times where they put
 7 things in different spots.
 8 Let's say you take the farthest
 9 spot that Etta puts him and the farthest spot
 10 that Tays puts him, that's still on that
 11 street corner, ladies and gentlemen. We
 12 don't just have Etta, Tays and Monique have,
 13 what they saw and what they told you, we have
 14 what the defendant told you happened.
 15 Mutt told you he got into an
 16 argument with Shannon over money and drugs,
 17 went home, got his gun, shot Shannon. He
 18 told you that through Brandon Lacurts.
 19 You know that Brandon and Mutt were
 20 cellmates. There's records in evidence and a
 21 stipulation of fact that they shared a cell
 22 at Howard Young.
 23 Brandon told you Mutt told him

1 about the murder, and that Brandon was
2 willing to come in here and testify. He also
3 told you he wasn't offered a thing in this
4 case to come in here -- excuse me, not in
5 this trial. His cooperation agreement, his
6 plea agreement, his substantial assistance
7 motion, they are all in evidence. Go look at
8 them.

9 State submits to you there is no
10 where in any of those documents that it is
11 discussed anything about this case. It was
12 about Dominic Delcampo, not about Damian
13 Thomas. He got nothing for coming in here.
14 He was given that substantial assistance back
15 in February of 2017. Look at the dates. His
16 attorney, Pete Velth, came in here and told
17 you it was over in February. Detective
18 Curley doesn't talk to him until May. He's
19 not even in jail anymore.

20 I've already told you it's up to
21 you to determine the credibility of the
22 people who took that witness stand and told
23 you what happened.

1 Why did Brandon tell you he was
2 doing it? Not because he was offered
3 anything. Because he told you he wanted to
4 do the right thing. He told you he's been
5 clean and sober since February of 2017. He
6 said it was important to him. In fact, I
7 will submit to you he said, it's everything
8 like important in life. He was proud of it,
9 and I submit to you when he starts to talk
10 about it, he tears up on the stand. That's
11 how much it means to him. He's making amends
12 in his life by coming in here and doing the
13 right thing, not because anybody has given
14 him anything.

15 On cross-examination, defense
16 counsel inferred that the reason Brandon
17 knows about what happened is because he went
18 through Mutt's stuff while they were in
19 prison. They read to you a police report
20 that says what happened.

21 Now I want to you to go back and
22 remember what Brandon says. Brandon says
23 they got into an argument over drugs. Mutt

1 left, went back and got his gun and shot him.
2 He says he doesn't even know the guy's name.

3 The police report that was read
4 into the record, here's what it says: The
5 witness knows the suspect by the nickname,
6 Mutt, and described him as a short black
7 male, dark complexion in his late 30s wearing
8 an oversized hooded dark coat and dark pants.
9 The witness explained that the victim and the
10 suspect waited off the porch and squered to
11 be ready to fistfight when the suspect took
12 out a handgun from his coat and began
13 shooting at the victim.

14 Where does it say he left and went
15 back and got his gun? Look at it again.
16 Where does it say it? It doesn't. Brandon
17 didn't read that report. Come on. It's a
18 26-year-old kid, who is 135 pounds soaking
19 wet in prison, with two other guys in his
20 cell. He told you he's nervous, and he's
21 scared. Do you think he's going through his
22 stuff to find it? No.

23 Because even if he did, even if he

1 read that police report, the facts that he
2 told you aren't in there. They are not
3 there. He knows it because Mutt told him.

4 Ladies and gentlemen, the defendant
5 has been charged in this case with Murder in
6 the First Degree. You are going to, as I've
7 already told you, listen to Judge Cooch read
8 you a lot of jury instructions. He's going
9 to instruct you about Murder First. He's
10 going to tell you that in order to be found
11 guilty of Murder in the First Degree, Mutt
12 must have intentionally caused the death of
13 another person. Cause, give it its common
14 meaning. Brings about the person's death.
15 But for those shots, Shannon is still alive.
16 Mutt's conscious object or purpose is to
17 cause the death of DeShannon Reid. It's
18 intentional. Shoots him once, walks up,
19 shoots him again. It's intentional. It's
20 not reckless.

21 Judge Cooch is going to instruct
22 you on Murder in the Second Degree and
23 Manslaughter. What's the difference between

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1 those two charges and Murder First, state of
2 mind. You can never know what's inside
3 someone's head. You have to surmise that by
4 the evidence that was presented to you in
5 this courtroom.

6 intentional versus reckless. Was
7 his behavior reckless when he shot him? A
8 person acts recklessly with respect to
9 causing another's death when the person was
10 aware of, consciously disregarded a
11 substantial and unjustifiable risk that death
12 would result. Is it reckless for him to go
13 over, stand over and shoot him? State
14 submits to you it's not. He pulled out that
15 gun, shot him, intended to kill him.

16 He's also been charged with
17 Possession of a Firearm During the Commission
18 of a Felony. What does that mean? It's
19 pretty self explanatory. He used the firearm
20 that he possessed to kill Shannon. He's also
21 been charged with Carrying a Concealed Deadly
22 Weapon. You heard from Detective Curley he
23 did not have a permit. He was not licensed

1 to carry a concealed deadly weapon. He had
2 that gun that he used to kill Mutt. I mean,
3 to kill Shannon.

4 When you go back into that room,
5 you get to talk about the case, and you read
6 the instructions. You will be instructed
7 that you get to consider the defendant's
8 flight.

9 Judge Cooch will say to you that
10 evidence of flight is admissible in a
11 criminal case as a circumstance tending to
12 show identity and consciousness of guilt.

13 What evidence do we have of flight?
14 Detective Curley told you he had warrants out
15 for his arrest on April 16, 2015. They
16 couldn't find him. They don't find him until
17 July 2016. Not here, not in Delaware, with
18 his girlfriend 17 years, but in Cherry Hill,
19 in Jersey. And when he's found, he tells
20 Officer Johnstone he's wanted in Delaware for
21 murder. He took off. There was flight.

22 How else do we know? Siatt Mayo's
23 phone records. Detective Curley read those

1 text messages that Siatt sent to Mutt the day
2 after the homicide and two days after the
3 homicide. I will read you some of those text
4 messages.

5 Can I come? Call me. I love you.
6 So I won't see you no more? I love you.
7 Please call me. I'm hurting bad. Stop
8 thinking about yourself.

9 On April 16, two days after the
10 murder, so I'm lost. Love you anyway.
11 Goodbye. Can you come home please. I'm the
12 one there for you. Say something. I'm
13 sitting here crying. You don't care. Call
14 me. Excuse my language, but that's real
15 fucked up how you are doing me. Now I see
16 how you really feel. Good luck.

17 Ladies and gentlemen, she is
18 begging him, begging him, either get back in
19 touch with me or take me with you. Why?
20 Because he's gone. Why is he gone? Because
21 he just killed Shannon Reid, and he picked up
22 and took off.

23 The State has the burden of proof

1 in this case. We're charged with proving
2 that Mutt shot Shannon beyond a reasonable
3 doubt.

4 What does beyond a reasonable doubt
5 mean? Again, I will send you the jury
6 instructions because Judge Cooch is going to
7 tell you there are few things in this world
8 that we know with absolute certainty.
9 Therefore, the law does not require proof
10 that overcomes every possible doubt. Proof
11 beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the
13 defendant's guilt.

14 Ladies and gentlemen, the State
15 submits that you've heard the evidence. We
16 will ask you to come back and return a
17 verdict of guilty if you are firmly convinced
18 of the defendant's guilt in the charges of
19 Murder First, Possession of a Firearm During
20 the Commission of a Felony, and Carrying a
21 Concealed Deadly Weapon. Thank you.

22 THE COURT: Mr. Armstrong.
23 MR. ARMSTRONG: Two things, Your

1 get the DNA, didn't do it.
 2 The case against Damien Thomas.
 3 This is what it boils down to. The death of
 4 DeShannon Reid. The death of any man is
 5 tragic, and the death of any man is wrong.
 6 You've got Etta Reid. You've got
 7 Ms. Cassidy. You've got Monique Pruden.
 8 You've got Brandon Lacurbs. You've got video
 9 evidence. You've got the physical evidence.
 10 And this entire wall is supposed to lead you
 11 to Damien Thomas.
 12 That is the State's case summed up
 13 right there. The problem is the video
 14 evidence is totally inconclusive. The video
 15 does not record the key moments. The
 16 physical evidence is not there, nothing
 17 finding Damien Thomas to that.
 18 Monique Pruden, we can toss her out
 19 of there. We know where she was. We just
 20 don't know why she said what she said and got
 21 up on that stand and did what she did.
 22 Brandon Lacurbs, the deal maker,
 23 goes away because he read the reports. He

1 got his deal, and he felt like he had to give
 2 them their pound of flesh.
 3 Etta Reid, we have a grieving
 4 mother. We have a grieving mother, but still
 5 the story should be consistent. Her story
 6 should match the evidence.
 7 And we have Ms. Cassidy, a friend
 8 of the victim, didn't give a statement for
 9 two years and still just could not get the
 10 facts right.
 11 So now what do we have left? The
 12 death of DeShannon Reid and Damien Thomas
 13 with no link, in the legal terms nexus. No
 14 nexus, and all we're left with is the death
 15 of Damien Thomas, a whole bunch of questions,
 16 a whole bunch of reasonable doubt, a whole
 17 bunch of unanswered questions, a whole bunch
 18 of inconsistent and conflicting testimony.
 19 What are we left with? Nothing.
 20 Thank you.
 21 THE COURT: We can take a short
 22 stretch break before we hear rebuttal
 23 argument from the State and then jury

1 instructions.
 2 Please take out the jury.
 3 (Whereupon, the jury exits the
 4 courtroom at 12:57 p.m.)
 5 THE COURT: Counsel, I have been
 6 trying to finalize the Manslaughter
 7 instruction that has the two alternative
 8 options, and that hasn't quite been finished
 9 yet. I will bring down a copy at this recess
 10 for you.
 11 (Whereupon, a recess is taken)
 12 THE COURT: I'm still working on
 13 the Manslaughter instruction.
 14 Please bring in the jury.
 15 Is the State ready?
 16 MS. PUTT: Can I approach Court
 17 staff for a moment?
 18 THE COURT: Yes.
 19 (Whereupon, the jury enters the
 20 courtroom at 1:16 p.m.)
 21 MS. PUTT: May I have a moment,
 22 Your Honor.
 23 THE COURT: Yes.

1 MS. PUTT: May I proceed?
 2 THE COURT: Yes. You may give the
 3 State's rebuttal argument in the case.
 4 MS. PUTT: Thank you.
 5 Ladies and gentlemen, good
 6 afternoon. I will try to be brief, and I
 7 will try and address things in a coherent
 8 manner.
 9 This is our opportunity to rebut
 10 what Mr. Armstrong said, and I have a
 11 tendency to go all other place. I will try
 12 my best to stay on track here with you.
 13 Mr. Armstrong just showed you a
 14 slide that says the scene of the shooting was
 15 very dark, and that gets you reasonable
 16 doubt.
 17 You have this picture up here,
 18 right. Defense 5 was up here all during Mr.
 19 Armstrong's closing and Defense 6. You guys
 20 see those?
 21 That's not the crime scene. Take a
 22 look. That's Pete's pizza. That's not the
 23 crime scene at 27th and Moore with the street

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1 light over top.

2 Mr. Armstrong also showed you a
3 much clearer version of the crime scene
4 sketch, State's Exhibit 23. Talked about
5 shell casings, the four shell casings and
6 says there's no evidence it comes from the
7 same gun. We don't have the gun. Okay.
8 It's not there. We have four shell casings
9 on the ground.

10 He says those four shell casings
11 conflict with the witnesses' stories, and he
12 gives you a pink line — I think it was
13 pink — about where the shell casings would
14 fall. He says here. Who says that? Who
15 said that? Who said that's where they would
16 fall?

17 Detective Curley got up on that
18 stand and told you that shell casings eject
19 to the right, to the right. He can't tell
20 you how far. He can't tell you if one would
21 eject a foot, one would eject two.

22 It's a street. Shell casings are
23 metal. Maybe they bounce.

1 The State submits to you that the
2 crime scene is consistent with the witnesses'
3 testimony, not inconsistent.

4 Etta Reid, you heard from Etta
5 Reid. You got to see her testify, saw her
6 take the stand. Going to tell you this more
7 than once in my rebuttal, it is your
8 recollection of the evidence that holds, not
9 what Mr. Armstrong just got up here and told
10 you during his closing and not what I'm going
11 to tell you, what your recollection is of the
12 evidence.

13 He said Ms. Reid didn't ID the
14 defendant in 2015. Go back to Detective
15 Curley's testimony. Detective Curley tells
16 you that he interviews Ms. Reid at Wilmington
17 Police Station. She says it's Mutt. If you
18 remember, he stood up there — he sat up
19 there and said our equipment wasn't working.
20 Remember, works for the City, stuff happens.
21 His equipment wasn't working.

22 So what did he do? He waited until
23 he got back up. He went to the hospital with

1 the pictures. She didn't ID him then because
2 it wasn't working.

3 Mr. Armstrong says to you that it
4 is without a doubt that Monique Pruden was in
5 jail. I think he writes jail up there five
6 or six times. She's emphatic. She sits up
7 there. She's there. The State submits to
8 you, the record says she's at Hazel D. Plant,
9 not jail, Hazel D. Plant.

10 MR. ARMSTRONG: Your Honor, may we
11 approach?

12 THE COURT: Yes.

13 MR. ARMSTRONG: Objection at
14 sidebar.

15
16 (Whereupon, the following
17 discussion is held at sidebar:

18 MR. ARMSTRONG: At this the point,
19 the State is trying to insinuate that Hazel
20 D. Plant is not a jail. It actually is a
21 jail housed at WCI. That is total
22 misrepresentation of the facts.

23 THE COURT: Ms. Pull.

1 MS. PUIT: May I collect one of the
2 defense exhibits?

3 THE COURT: Yes.

4 MS. PUIT: Thank you. Your Honor,
5 I'm referring to Defense Exhibit 17 that
6 Mr. — I think it was Mr. Armstrong, put into
7 evidence, where it says that it is a
8 facility, first all-female facility of its
9 kind with a work release component.

10 THE COURT: Is the State
11 suggesting, because it should know, that she
12 was out on work release or was at liberty or
13 not in a custodial section?

14 MS. PUIT: I think the answer is no
15 one knows. I think we can argue they put
16 into evidence it's a work release facility.

17 THE COURT: I know defense put that
18 into evidence, but does the State believe
19 that she was at liberty in some fashion on
20 April 14, 2017?

21 MS. PUIT: I do not know.

22 THE COURT: Well, I think it's the
23 State's — the State is in control of the

1 Department of Corrections. I don't think the
2 State should be permitted to suggest, just
3 because this document was put into evidence,
4 it was partially a work release facility,
5 which probably is --

6 MS. PUT: Your Honor, sorry to
7 interrupt.

8 THE COURT: Go ahead.

9 MS. PUT: On cross-examination
10 said she has a job at Deels on Miller Road in
11 April of 2015.

12 THE COURT: What has the State
13 found out from the Department of Correction
14 as to where she was on April 14?

15 MS. PUT: I do not have an answer.
16 All I know is that she was at Hazel D. Plant,
17 and I don't have a definitive answer. That's
18 what we were trying to get, and I can't get
19 it.

20 MR. ARMSTRONG: That is a Level V
21 facility, Your Honor. The State is now
22 saying that it's not. It's a prison.

23 THE COURT: I think just because

1 Your Honor?

2 THE COURT: Yes.

3 Ms. Put.

4 MS. PUT: Your Honor, I think we
5 made a record that we disagree. I
6 understand, and I will move on.

7 MR. ARMSTRONG: Actually, Your
8 Honor, that's not enough. I think the record
9 should be corrected. We objected. She has
10 said that she was not in jail; she was at
11 Hazel D. Plant, which leads the jury to
12 believe she is not in jail. That needs to be
13 corrected, Your Honor.

14 I ask the Court to make that
15 correction that Hazel D. Plant is a facility
16 of the Department of Correction.

17 THE COURT: Ms. Put.

18 MS. PUT: I disagree, Your Honor.

19 THE COURT: Well, then I think the
20 State should have put on some evidence that
21 she was in the work release program or had
22 the ability to leave, other than this
23 document. I have to find the question

1 that document was put into evidence and
2 suggests that it can be a work release
3 referral, it is incumbent on the State, maybe
4 just because personnel at the Department of
5 Correction weren't there in the last couple
6 of days, when this 24 hours almost when this
7 came to light, I don't think the State should
8 be able to suggest that she might have been
9 able to leave without affirmative proof,
10 given the seriousness of this that the
11 defendant -- I think it's stated another way,
12 I think the State is bound by the weight of
13 the facts developing this case, that she was
14 in prison on April 14, and I'm just going to
15 preclude the State from arguing to the
16 contrary.

17 The State is the one on this
18 important issue that should be able to tell
19 the Court whether or not she was in prison.
20 If you say you can't tell that one way or the
21 other, I'm not going to allow an argument to
22 the contrary.

23 MS. PUT: May I have a moment.

1 because the State never argued until right
2 now in rebuttal, there was a theoretical
3 opportunity of her to not have been at Hazel
4 D. Plant.

5 I'm going to instruct the jury that
6 Hazel D. Plant is a secure facility because I
7 think it was incumbent on the State, having
8 called her as a witness, found out the fact
9 it did, to have shown one way or the other
10 that she was in the custodial situation at
11 Hazel D. Plant or not.

12 So I'm going to instruct the jury
13 that for the background facts, Hazel D. Plant
14 is a, in fact, a jail.

15 MS. PUT: Understood.

16 MR. ARMSTRONG: Thank you.
17 (Whereupon, the discussion at
18 sidebar concludes.)

19 - - -

20 THE COURT: Members of the jury, I
21 instruct you that Hazel D. Plant facility is
22 a jail.

23 You may continue, Ms. Put.

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1 MS. PUTT: Thank you, Your Honor.
2 Let's go back and refer to the
3 lighting outside. It's your job to listen to
4 the evidence and listen to the record that's
5 in front of you.

6 Not a single person has testified
7 that it was too dark out there for them to
8 see what was going on. Every single person
9 who took the stand got up and said they could
10 see. That's the evidence in front of you.

11 Ladies and gentlemen, you've seen
12 this video quite a few times, and I'm sorry,
13 but I am going to show it to you one more
14 time because Mr. Armstrong said on his
15 closing that the key pieces of evidence are
16 missing.

17 The State is going to show you
18 three hours -- not three hours -- three
19 minutes of video that we have collected that
20 show Mr. Thomas walking back and forth from
21 the crime scene.

22 Is it unfortunate that part of the
23 video of from Pete's is not there? Sure is.

1 Armstrong told you use your common sense. I
2 beg you to do the same.

3 (Whereupon, the video is played.)

4 MS. PUTT: Where did he go after he
5 shot Shannon? We don't know. We know he
6 took off. On the run for over a year.

7 I've already told you that you are
8 going to be instructed about what that flight
9 means, how you can consider that flight.
10 It's admissible to show. One, identify, and
11 two, consciousness of guilt.

12 Because, again, ladies and
13 gentlemen, use your common sense. The dude
14 that you see on the video walking back and
15 forth, arguing, spit on, that's not the dude
16 that shot him? Come on.

17 Because Tave Cassidy puts him on
18 this part of street and Elta Reid puts him
19 three feet over here on the other part? Come
20 on. Common sense, ladies and gentlemen, and
21 don't just take the witnesses' words for what
22 happened. You have most of it on video.

23 Brandon Lacerte, I talked to you

1 Detective Putt told you that. He said he
2 went back through; he counted all the skips;
3 he watched hours of video to try and find it.
4 Unfortunately, the system doesn't have it.

5 That's not all the evidence that
6 you have that he ran through the parking lot.
7 The witnesses tell you.

8 I am going to ask for some help
9 from my counsel for a moment.

10 Ladies and gentlemen, I am about to
11 show you video without the four screens,
12 without it stopping and going from one, but a
13 consistent timeline of Damien Thomas from
14 9:31, when he leaves, then walks out of Crest
15 View, walks down the street up to Mr. Reid's
16 porch, leaves after he gets in an argument,
17 gets spit on, goes back, goes back into his
18 apartment, 30 seconds, long enough to get a
19 gun, walk out, walks right back down the
20 street. You are going to watch that
21 evidence.

22 What's the argument? That after
23 all that, that somebody else did it? Mr.

1 about him in my closing. You got to see him
2 testify. You got to judge his credibility.
3 Does that guy sound to you -- you guys
4 listened to him answer. I submit to you he
5 said, I'm sorry. He fumbles. He's nervous.
6 Not only because he's nervous up there. He's
7 nervous in jail.

8 Is he going to risk reading through
9 somebody's discovery and getting caught?
10 Let's be crazy for a second and presume that
11 when he says, yes, he read his discovery,
12 then how does he know he left the scene, went
13 back and got a gun and came back? Because
14 that's not how he knows. He doesn't know
15 that way. He knows because Mutt is talking
16 about it in prison. Don't overlook that
17 fact. Don't. Without that, nothing in the
18 record has that. He doesn't know it unless
19 Mutt tells him.

20 One more thing about Mr. Lacerte.
21 You've got records. It shows that those two
22 were cellmates until November 28, 2016.
23 You'll think back to last week when

1 Mr. Lacurto was on the stand and his letter
2 to his attorney, Mr. Veith, went in,
3 postmarked his letter to November 30. Two
4 days after, he's no longer cellmates with the
5 guy who made him nervous. That's when he has
6 the nerve to then write the letter, talk
7 about Ms. Cassidy.

8 Again, your recollection of the
9 evidence is what's important in this case.

10 The State submits to you that when
11 Star took the stand, she was asked about the
12 make up of her room, and she says the TV is
13 over here, blah, blah, blah, there's nothing
14 in front of the windows, and Mr. Armstrong
15 says, Why did you say there's nothing in
16 front of the windows? Because there's
17 nothing in front of windows. Not because she
18 talked to Taye. Because there's nothing in
19 front of the windows.

20 Again, it's your recollection that
21 controls.

22 Taye didn't answer the door when
23 Corporal Brown knocked on her door.

1 Do you know anyone who has ever
2 been in their house, doesn't answer the door
3 when somebody knocks? Maybe they are in the
4 bathroom. Maybe they are on the phone with
5 Star.

6 Right, moments after this happens,
7 Taye calls Star. Star tells you she's upset.
8 I can't even understand what she's saying.
9 What does she say? She's so upset. What
10 does she say moments after? Mutt shot
11 Shannon, one time.

12 Days later, Detective Curley is out
13 on the street checking on Etta Reid. What
14 does Taye tell him, Mutt shot Shannon. The
15 third time when she's interviewed by
16 Detective Curley in the car, you heard her
17 testify about that, what does she say, Mutt
18 shot Shannon.

19 And then the fourth time, when she
20 came into this courtroom, what did she say,
21 Mutt shot Shannon.

22 Ladies and gentlemen, that's
23 consistent, not inconsistent.

1 I want to thank you for your time
2 and for your patience during trial. I want
3 to touch on one more thing before the judge
4 will instruct you and allow you to go to
5 deliberate.

6 The judge is going to give you one
7 other instruction regarding conflicts in
8 testimony. If you go back there and you
9 believe there's conflicts in testimony, read
10 the instructions.

11 If you find the testimony to be
12 conflicting by reasons of inconsistency, it's
13 your duty to reconcile it, if reasonably
14 possible, so as to make one harmonious story
15 of it all.

16 The State submits to you we
17 provided you with a harmonious story of it
18 all. Take a step back, look at the big
19 picture.

20 We will ask that if you are firmly
21 convinced of the defendant's guilt, that you
22 find him guilty of the charges of Murder
23 First Degree, Possession of a Firearm During

1 the Commission of a Felony and Carrying a
2 Concealed Deadly Weapon.

3 Thank you again for your time.

4 THE COURT: Will the bailiff take
5 the jury out for what should be the final
6 recess in this trial for about five minutes.
7 Please take out the jury.

8 (Whereupon, the jury exit the
9 courtroom at 1:38 p.m.)

10 THE COURT: Can the bailiff give
11 one set of jury instructions to each side,
12 and please note how I've done the
13 Manslaughter instruction. I've made some
14 last-minute changes. I didn't want to do
15 this at sidebar. Give you a little bit more
16 time.

17 MS. PUTT: Thank you, Your Honor.

18 THE COURT: Ms. Putt.

19 MS. PUTT: The State has no
20 objections to your instructions as they read.

21 MR. ABDEL-LATIF: No objection,
22 Your Honor.

23 THE COURT: All right. Please

IN AND FOR NEW CASTLE COUNTY

))))))

I.D. NO. 1010016640

v.

Defendant.

BEFORE: HONORABLE VIVIAN L. MEDINILLA

APPEARANCES:

A.J. ROOP, ESQ.
Deputy Attorney General
For the State

JAY EDINGER, ESQ.
For the Defendant

VIOLATION OF PROBATION TRANSCRIPT
OCTOBER 4, 2017

LISA A. MASCANTONIO, RPR
SUPERIOR COURT OFFICIAL REPORTERS
500 N. King Street
Wilmington, Delaware 19801
(302) 255-0567

OCTOBER 4, 2017
Courtroom No. 6C
9:19 A.M.

PRESENT:

As noted.

- - - - -

MR. EDINGER: Good morning, Your Honor.

This is your Violation of Probation Calendar
for October fourth.

We have a bunch of attorneys stacked up.
Ms. Woloshin is a plea. I don't know if the
paperwork is ready on that.

Mr. Roop is here on another matter, on
Pruden.

And, Your Honor, may we approach sidebar?

THE COURT: With respect to who?

MR. EDINGER: Monique Pruden.

MR. ROOP: P-r-u-d-e-n.

THE COURT: All right.

- - -

(Off the record discussion held at sidebar.)

- - -

THE COURT: All right. Let me get the file.
Ms. Pruden, this is a violation of probation

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1 hearing.

2 Is there an officer here?

3 No.

4 Any application you wish to make?

5 MR. EDINGER: Well, I guess at this point,
6 since we have no officer, I would move to dismiss
7 the violation.

8 THE COURT: The motion is granted. This
9 goes back to 2015, so without an officer, I am
10 going to dismiss the violation.

11 MR. EDINGER: Thank you, Your Honor.

12 MR. ROOP: Thank you, Your Honor.

13 That completes my matters. May I be
14 excused?

15 THE COURT: You may.

16 (Whereupon, the proceeding concluded.)

17

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1 Audio Recording: 200319_002 - Monique Pruden Interview
2 0:00 to 2:20 -- Noise, no statements
3 2:21
4 (Telephone rings.)
5 PRUDEN: (On telephone) Hello?
6 WIAANT: Hey. It's --
7 PRUDEN: (On telephone) You outside?
8 WIAANT: I am. I'm at the, uh -- in a white pickup truck
9 down on the corner at [REDACTED]
10 PRUDEN: (On telephone) Okay. Yes. I'm coming out.
11 WIAANT: All right.
12 2:45 to 4:00 -- Noise, no statements
13 4:01
14 WIAANT: Hello.
15 PRUDEN: Hi.
16 WIAANT: How you doin'?
17 PRUDEN: Fine.
18 WIAANT: I'm Mike Wiant.
19 PRUDEN: I'm Monique.
20 WIAANT: Monique.
21 PRUDEN: Yeah.
22 WIAANT: It's nice to meet you. I have a couple of things
23 that I have to explain to you before we get started. Okay?
24 PRUDEN: Okay.
25 WIAANT: My name's Mike Wiant. I'm a private investigator.

1 PRUDEN: Okay.
2 WIAANT: I work for the Law Office of Chris Koyste, who is
3 representing Damian Thomas. Okay?
4 PRUDEN: Okay.
5 WIAANT: So I just wanted to make you aware of um, who I
6 represent and -- and, uh, who the law office represents.
7 Okay?
8 PRUDEN: Okay.
9 WIAANT: And you, you -- you know who Damian Thomas is;
10 correct?
11 PRUDEN: Mutt?
12 WIAANT: Mutt, right.
13 PRUDEN: Okay.
14 WIAANT: Okay? Um, how are you handling the coronavirus
15 stuff?
16 PRUDEN: Fine, I guess (laughs).
17 WIAANT: (Laughs.)
18 PRUDEN: All right.
19 WIAANT: This is my business card. Okay?
20 PRUDEN: All right. I got -- I got this one from you from
21 the other guy.
22 WIAANT: Uh, from, um --
23 PRUDEN: Alfred.
24 WIAANT: Alfred?
25 PRUDEN: Yeah.

1 WIAANT: Yeah. I, uh -- I know Alfred from a long time ago,
2 yeah. Yeah. Um --
3 PRUDEN: Where you know him from?
4 WIAANT: Just being in the business.
5 PRUDEN: Okay.
6 WIAANT: You know what I mean? So I have -- I made some,
7 some notes just because, uh, so --
8 PRUDEN: All right. I'm just -- I don't know, 'cause -- I
9 don't know really what they want me to say 'cause --
10 WIAANT: Well, I don't want -- I don't want you to, uh -- I
11 don't want you to say just anything. I'm just going to ask
12 you some real easy questions, just to get some clarification
13 because uh, some of the -- some of the stuff was confusing.
14 So I just want to make sure that -- that everybody knows
15 exactly what was, um -- but anyway.
16 PRUDEN: Right.
17 WIAANT: Let me, let me -- let me start with your address.
18 What's your, what's your -- what's your full name?
19 PRUDEN: Do I have to say on this?
20 WIAANT: You don't have to do anything, hun.
21 PRUDEN: No. I'm just saying because I don't -- at the end
22 of the day, I just don't want, like, my name on nobody's
23 papers and --
24 WIAANT: All right. Well --
25 PRUDEN: None of that kind of shit. I, I really don't.

1 WIAANT: I, I understand that. And you have to -- you have
2 to remember that you know, we -- we just want -- we just
3 want to get to the truth of the -- of the matter. And there
4 seemed to be a question of what your DOC supervision --
5 PRUDEN: You guys wanna know what I'm talkin' about --
6 WIAANT: Yeah, right.
7 PRUDEN: -- sayin' I was in jail when it happened?
8 WIAANT: Right. Exactly.
9 PRUDEN: Yeah.
10 WIAANT: So that's --
11 PRUDEN: So I wasn't there.
12 WIAANT: -- basically why I'm --
13 PRUDEN: I wasn't there.
14 WIAANT: Why I'm here.
15 PRUDEN: Nope.
16 WIAANT: So you -- you weren't --
17 PRUDEN: No.
18 WIAANT: -- at the --
19 PRUDEN: Mm-hm, nope.
20 WIAANT: Okay. But, but you told them that, though.
21 PRUDEN: This was because of some -- I --
22 WIAANT: Well, see, that's what I mean. That -- that's all
23 we're trying to do, is figure out what your status was at
24 the time.
25 PRUDEN: Mm-hm.

A255

1 WIAINT: So were you in -- incarcerated at the time?
2 PRUDEN: Mm-hm.
3 WIAINT: You were?
4 PRUDEN: Yeah.
5 WIAINT: Where were you incarcerated?
6 PRUDEN: At MCI.
7 WIAINT: You -- so you were actually -- now, I used to work
8 for the Department of Corrections.
9 PRUDEN: Mm-hm.
10 WIAINT: So I have some familiarity with it. Okay?
11 PRUDEN: Okay.
12 WIAINT: So were you at the work release center, or were you
13 at MCI?
14 PRUDEN: I wasn't sure. But it's like -- I think I was
15 at -- I had to be in the Crest across the street.
16 WIAINT: Okay. So you were --
17 PRUDEN: Yeah.
18 WIAINT: -- at Crest? So you -- you were on work release?
19 PRUDEN: Yeah, work release across the street from like --
20 you know it's on the, uh -- MCI's grounds now.
21 WIAINT: Like the -- the Hazel Plant?
22 PRUDEN: Yeah. Across on the other side, yeah.
23 WIAINT: Right. Right.
24 PRUDEN: Mm-hm.
25 WIAINT: Okay. So you were actually on -- at the Hazel

1 Plant?
2 PRUDEN: Yes.
3 WIAINT: Okay. Were you working or anything like that?
4 PRUDEN: No, Mm-mm.
5 WIAINT: You weren't working? So where on that particular
6 day -- do you remember what day it was?
7 PRUDEN: Mm-mm, no.
8 WIAINT: You don't remember?
9 PRUDEN: No.
10 WIAINT: Okay. So it was -- it was, uh, April 14th.
11 PRUDEN: That's when it was?
12 WIAINT: Yeah, on -- in 2015.
13 PRUDEN: When I was -- when I was there?
14 WIAINT: No. No, the night of the incident.
15 PRUDEN: Of the incident? Oh.
16 WIAINT: Okay. Uh --
17 PRUDEN: So what, is he trying to like --
18 WIAINT: No, nobody's --
19 PRUDEN: -- get out?
20 WIAINT: No, no, no, no. Nobody's trying to do anything.
21 PRUDEN: Right.
22 WIAINT: We're just trying to find out what -- because there
23 was some confusion in court.
24 PRUDEN: Right.
25 WIAINT: We're just trying to figure out what exactly

1 occurred. Now, we're -- we're in the process of getting the
2 DOC documents and stuff like that. But I wanted to talk to
3 you in person because sometimes things get a little
4 confusing for -- of paperwork and, you know, the DOC messes
5 things up. You know.
6 PRUDEN: Right.
7 WIAINT: So you were -- you're positive that you were not at
8 the scene when this happened?
9 PRUDEN: I'm positive.
10 WIAINT: Okay. How are you positive about that?
11 PRUDEN: Because I was in jail.
12 WIAINT: Okay. So this begs the question, um -- and usually
13 there's a -- there's a reason that you would say something
14 like that. Why, why would you tell them that you were there
15 when you weren't there? Were you trying to --
16 PRUDEN: No. It -- I don't really want to explain it. But
17 it was just at the time, it was something going on, and they
18 was just like no. You know, how people wanted you to -- I
19 don't know. I just -- I shouldn't have did what I did.
20 WIAINT: Right.
21 PRUDEN: I really shouldn't. And you know, I -- I wish I
22 didn't.
23 WIAINT: Right. Okay. And I understand that. And you know,
24 it's not -- it's not the end of the world and --
25 PRUDEN: Right.

1 WIAINT: -- you know, things can --
2 PRUDEN: Right.
3 WIAINT: This is your opportunity to, to make things right,
4 basically.
5 PRUDEN: Right. Right.
6 WIAINT: So was -- were you -- were you in trouble at the
7 time? Or had you been in any kind of uh, situation with,
8 with police or anything like that?
9 PRUDEN: Something. Yeah, something like that. Pretty
10 much, yeah.
11 WIAINT: Okay. What was -- what was going on with you and
12 the police at the time?
13 PRUDEN: Nothing. It was just at the time I think I had a
14 capias or something like that.
15 WIAINT: Mm-hm.
16 PRUDEN: At the time, yeah.
17 WIAINT: Okay.
18 PRUDEN: Mm-hm.
19 WIAINT: All right. Um, so you weren't working? Because I
20 think you said in your testimony that you were working at --
21 at Deals or something like that?
22 PRUDEN: Well, I did have [UNT] -- yeah, right here on
23 Miller Road.
24 WIAINT: Okay.
25 PRUDEN: Yeah.

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1 WIAINT: Now, was that when you were in the DOC?
2 PRUDEN: No. I wasn't working when I was there.
3 WIAINT: Okay. Did -- when you were at the DOC at the time
4 on that -- on that day, do you remember April 14th, 2015
5 when this happened?
6 PRUDEN: No.
7 WIAINT: Now, how did -- I'm trying to explain this. So how
8 did you become aware of, like -- to offer this information?
9 You know what I mean? Like what came up where you were
10 like, "Oh, yeah, I know about this"? You know what I mean?
11 PRUDEN: I mean, everybody know -- knew about it. Like,
12 everybody knew about it.
13 WIAINT: Mm-hm.
14 PRUDEN: Everybody knew.
15 WIAINT: So (laughs).
16 PRUDEN: (Laughs.) What? Because you like, (sound
17 indicaron). Everybody knew about it. Like, at the end of
18 the day, when you even -- you even shot somebody in front of
19 their mother, so how could you not -- I don't know what the
20 hell he's trying to -- what the fuck?
21 WIAINT: Right? Right?
22 PRUDEN: What the fuck?
23 WIAINT: Did you know the guy that was shot?
24 PRUDEN: Yeah, Shannon, mm-hm.
25 WIAINT: And what's his last name?

1 PRUDEN: Not sure what Shannon's last name is.
2 WIAINT: How, how did you know him?
3 PRUDEN: From the neighborhood. Like, we grew up together.
4 Like, you know, we used to, you know, on 27th Street. Like,
5 we all just grew up in the same neighborhood.
6 WIAINT: Mm-hm. All right. So a lot of -- lot of my
7 questions were talking about that night that you were -- you
8 were at the -- at the scene. Who did you tell that you were
9 there?
10 PRUDEN: It was, um -- it was, like, the police; like the,
11 um -- I think it was -- what is they? Detectives.
12 WIAINT: The.
13 PRUDEN: The detectives.
14 WIAINT: The detectives? And what did you -- what did you
15 tell them?
16 PRUDEN: Are you going to keep questioning me about it?
17 I wasn't there.
18 WIAINT: I, I know. I'm just asking you what did you tell
19 the police that, uh -- that you, you saw.
20 PRUDEN: That I seen that -- like, that -- no, like where --
21 all right. This the only thing told them is what -- you
22 knew, that I knew about they were arguing about, you know --
23 got in an argument, like -- and the bottom line is he had,
24 um -- it was like him and Shan -- him and Shannon, it was
25 about some weed. They got into it about some weed or

11

12

1 something.
2 WIAINT: Right.
3 PRUDEN: And then, like, you know, he, um -- I think Sh --
4 like, what it was was Shannon had spit -- he had did like
5 spit on him, he did something to him. And then that's when,
6 like, Matt came back and, like, came around there and shot
7 him. But I guess it was, like, more like because he felt
8 like, you know, he embarrassed him in front of people.
9 WIAINT: Right. Right.
10 PRUDEN: You know what I mean?
11 WIAINT: So how did you know that, to tell the police that?
12 PRUDEN: Because the person that was there that I know.
13 WIAINT: Okay.
14 PRUDEN: Mm-hm.
15 WIAINT: Now -- okay. Now, who -- who was that?
16 PRUDEN: Why I got to tell you? So you going to go looking
17 for them, too? No.
18 WIAINT: (Laughs.)
19 PRUDEN: (Laughs.) No. Hell no.
20 WIAINT: All right. So when you -- when you told the police
21 that you saw this happen, where were you when you told them
22 that? Were you --
23 PRUDEN: I think -- where I was down like the -- I was in
24 the police station.
25 WIAINT: You were in the police station?

1 PRUDEN: Mm-hm.
2 WIAINT: For, for what?
3 PRUDEN: I don't remember.
4 WIAINT: Were you -- did you get locked up?
5 PRUDEN: For some -- no, like they were -- I was down there
6 for something else. Like, when the boy had got, um, kilt
7 [sic] on -- in -- like, down in front of me on Gordon
8 Street, so they was questioning me about something I just --
9 WIAINT: So they were questioning you about another shooting?
10 PRUDEN: Mm-hm.
11 WIAINT: And then that's --
12 PRUDEN: Yeah.
13 WIAINT: -- when you --
14 PRUDEN: Yeah.
15 WIAINT: You offered? Did they ask you about --
16 PRUDEN: Yeah, they axed [sic]. They, they axed.
17 WIAINT: That -- that's why I'm just trying to figure out,
18 how this conversation --
19 PRUDEN: Came about?
20 WIAINT: Yeah, came about.
21 PRUDEN: Yeah.
22 WIAINT: Help me understand that.
23 PRUDEN: They axed. They were like, you know -- you know
24 how cops are. They just be -- they axin' shit, like you're
25 axin' me shit.

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1 WIAINT: (Laughs.)
2 PRUDEN: Fishin' and stuff.
3 WIAINT: Right. Right.
4 PRUDEN: I'm gettin' ready to get out now. We done?
5 WIAINT: Just a couple more questions.
6 PRUDEN: (Laughs.)
7 WIAINT: If you're -- if you're okay with that.
8 PRUDEN: Okay.
9 WIAINT: Um, so do you remember the detective's name or the
10 police officer's name that you told that to?
11 PRUDEN: Yeah. Officer McKenzie.
12 WIAINT: McKenzie? Was that during an, an interview with
13 him, or?
14 PRUDEN: No, that's a -- that's a female. She's a female.
15 WIAINT: Female? And you told her that you knew about the --
16 this, the --
17 PRUDEN: Mm-hm.
18 WIAINT: -- Shannon --
19 PRUDEN: Mm-hm.
20 WIAINT: -- thing? Did -- was that recorded, by any chance?
21 PRUDEN: No.
22 WIAINT: No? It was just a conversation.
23 PRUDEN: Mm-hm.
24 WIAINT: And when was that?
25 PRUDEN: I don't know exactly --

1 WIAINT: No, no, no. No. This is a long, long, long time
2 ago.
3 PRUDEN: Oh.
4 WIAINT: So.
5 PRUDEN: Well, what were you, a Wilmington police officer?
6 WIAINT: No, mm-mm.
7 PRUDEN: A detective?
8 WIAINT: Mm-hm, yup. So, um, when --
9 PRUDEN: You act like a detective (laughs).
10 WIAINT: So what I -- what I want to be able to do is, uh,
11 I want to go over, uh, our conversation, um, make sure I
12 have all my questions answered. Is there a chance I can
13 call you back maybe and meet up again?
14 PRUDEN: Yeah. Okay.
15 WIAINT: All right.
16 PRUDEN: So what, are y'all trying to get him out, is what
17 I'm saying?
18 WIAINT: Like, like I said --
19 PRUDEN: See, you can't tell me shit, but you want me to
20 tell you?
21 WIAINT: No, no, no. I'm -- here's -- remember I told you I
22 was a -- I was a pretty cool dude?
23 PRUDEN: Yeah.
24 WIAINT: Right? So here's the -- here's how it works. I --
25 like I told you, I work for --

1 WIAINT: I mean, like was it the night of the incident --
2 PRUDEN: No.
3 WIAINT: -- or like months later?
4 PRUDEN: It was like -- yeah, later. Yeah.
5 WIAINT: Okay. Did, um, anybody at the attorney general's
6 office talk to you about this or anything like that?
7 PRUDEN: Mm-hm.
8 WIAINT: No? So nobody in the, the attorney general's office
9 or --
10 PRUDEN: Mm-mm.
11 WIAINT: -- spoke to you about this?
12 PRUDEN: Nope.
13 WIAINT: And so they didn't -- they didn't talk to you before
14 trial or anything?
15 PRUDEN: Mm-mm, no.
16 WIAINT: No? Okay.
17 PRUDEN: That's it.
18 WIAINT: Um, how -- how long have you known Alfred?
19 PRUDEN: A long time.
20 WIAINT: Long time? Were you guys boyfriend/girlfriend?
21 PRUDEN: Something like that, at one time (laughs). Now you
22 know him?
23 WIAINT: I -- long story. I, I used to be -- I used to be in
24 police work a long time ago. I'm retired.
25 PRUDEN: So you locked his ass up one time?

1 PRUDEN: Right.
2 WIAINT: -- the law office.
3 PRUDEN: Right.
4 WIAINT: They -- they don't tell me everything. You know
5 what I mean?
6 PRUDEN: Right.
7 WIAINT: They just say, "Hey, can you find Monica --" or
8 Monique: I'm sorry -- and go interview her? And this is
9 what we want you to interview her."
10 PRUDEN: Oh.
11 WIAINT: That's it. Okay? So that's all I know. So I'll
12 have to go back, refer to them, and then see if there's
13 anything else that they want.
14 PRUDEN: Okay.
15 WIAINT: You, you see what I mean?
16 PRUDEN: That's fine.
17 WIAINT: So it's not like I have -- it's not like I know all
18 the answers to everything.
19 PRUDEN: Right.
20 WIAINT: So that's why it's important that you're -- you're
21 just completely honest with me.
22 PRUDEN: Okay.
23 WIAINT: Yeah. Like I said, I'm not the police, you know.
24 PRUDEN: Right. Right.
25 WIAINT: So if you were there, you were there. If you

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1 weren't, you weren't. I want to know the --
 2 PRUDEN: Right.
 3 WIAINT: -- the truth.
 4 PRUDEN: Right. Right.
 5 WIAINT: So is you -- you weren't there -- you weren't even
 6 close by that thing?
 7 PRUDEN: Nope, mm-mm.
 8 WIAINT: Okay. And when you were in court that day, um, do
 9 you remember thinking about whether you shouldn't testify to
 10 this, or you should, or --
 11 PRUDEN: Yeah, I remember. Yeah, I shouldn't -- like, yeah.
 12 I -- yeah. I regret that I did.
 13 WIAINT: Did you -- when you were going through the process
 14 --
 15 (Phone rings.)
 16 WIAINT: Sorry about that. Did, um -- were you having,
 17 having second thoughts beforehand? Now come you didn't say
 18 anything --
 19 PRUDEN: Ahead of time?
 20 WIAINT: Yeah, like when you --
 21 PRUDEN: It was like it was too late. It was like it was
 22 just, like, too late.
 23 WIAINT: Okay. All right. Did anybody talk to you about it
 24 afterwards or anything like that?
 25 PRUDEN: No.

1 WIAINT: No? All right. Um --
 2 PRUDEN: That's it?
 3 WIAINT: Which house -- yeah. What house are you in? You're
 4 [REDACTED]
 5 PRUDEN: Ain't nobody gonna be comin' to my house on' shit?
 6 WIAINT: No, no, no, no, no. Is that -- I was just asking
 7 about the door. Is that door --
 8 PRUDEN: No, this is a house, single house. This is like --
 9 those are two apartments, but this is a house that I'm in.
 10 WIAINT: The one with the sign on it?
 11 PRUDEN: Yeah.
 12 WIAINT: Oh, okay. Are you guys moving or something?
 13 PRUDEN: I am, soon.
 14 WIAINT: What is that -- what's the sign on the door say?
 15 PRUDEN: It's like a "No Loitering." It just says "No
 16 Loitering."
 17 WIAINT: Oh, oh, oh. I thought it was no, no en -- you know,
 18 no --
 19 PRUDEN: Oh. No, no, no.
 20 WIAINT: Evicted notice or something like that.
 21 PRUDEN: No, no, no.
 22 WIAINT: That's what I thought it was.
 23 PRUDEN: No.
 24 WIAINT: Okay.
 25 PRUDEN: Uh-uh.

1 WIAINT: So I, I can call you?
 2 PRUDEN: Sure.
 3 WIAINT: That's only your phone; nobody else answers it?
 4 PRUDEN: My phone in my hand, yeah.
 5 WIAINT: Yeah.
 6 PRUDEN: Just me.
 7 WIAINT: Okay.
 8 PRUDEN: Mm-hm.
 9 WIAINT: All right, Monique. I appreciate you meeting with
 10 me.
 11 PRUDEN: You're welcome.
 12 WIAINT: All right. You take care of yourself. Let me --
 13 PRUDEN: All right.
 14 WIAINT: All right. Take care.
 15 PRUDEN: Yup.
 16 WIAINT: Thank you.
 17 PRUDEN: Uh-uh.
 18 17:57 to 18:04 -- Noise, no statements
 19
 20
 21
 22
 23
 24
 25

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

DAMIAN THOMAS,

Defendant.

LD. No.1505012411

ORDER

AND NOW, TO WIT, this 16th day of March, 2020 the foregoing

Motion for Issuance of a *Subpoena Duces Tecum* for Directing the Production of Materials from the Department of Correction having been heard and considered, it is hereby GRANTED:

The Delaware Department of Correction ("DOC") shall, within thirty (30) days of this Order, produce custodial records pertaining to Monique L. Pruden's status, housing, and leave permissions (including work or residential placement outside DOC institutions) for the time period of April 13, 2015 through April 15, 2015 in the possession of the DOC.

Upon review of Defendant's motion and
State's response, the relief is
granted as set forth in this Order.


The Honorable Andrea L. Rocanelli

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Delaware Department of Correction - [Booking Search - CBI_SRCH] - Booking Search

Delaware Department of Correction - [Booking Search - CBI_SRCH] - Booking Search Report Created on Monday March 16, 2020 15:30

SBI #	Last Name	First Name	MI	Suffix	Location	Location
Birth Date	Status	Total Searches Retrieved	Admitted	Released	Offender Type	Method
Method	Arrived From	Departed To				
00384434	PRUDEN	MONIQUE			DO52	DO52
	Inactive	25	05/01/2015	11/13/2019	Sentenced Probationer	500
220	HDP Hazel D. Plant Women's Treatment Facility	Unknown Court/Street				
00384434	PRUDEN	MONIQUE			HDP	HDP
	Inactive	25	03/25/2015	04/29/2015	Sentenced	500
500	BWCI Baylor Women's Correctional Institution	DO52 Cherry Lane Probation and Parole				
00384434	PRUDEN	MONIQUE			BWCI	BWCI
	Inactive	25	02/07/2015	03/25/2015	Sentenced	420
500	JP Court/Alderman Court	HDP Hazel D. Plant Women's Treatment Facility				
00384434	PRUDEN	MONIQUE			DO52	DO52
	Inactive	25	05/10/2011	02/25/2015	Sentenced Probationer	500
730	BWCI Baylor Women's Correctional Institution	OTHER				
00384434	PRUDEN	MONIQUE			BWCI	BWCI
	Inactive	25	03/30/2011	05/05/2011	Sentenced	420
500	Superior Court	DO52 Cherry Lane Probation and Parole				
00384434	PRUDEN	MONIQUE			BWCI	BWCI
	Inactive	25	11/20/2010	12/06/2010	Detentioner	420

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Contact Notes

Date: 03/16/2020

SBI# : 00384434

Name(L,F,M,S): PRUDEN MONIQUE

Institution :

Contact Type: Home Visit NEG	Date: 05/06/2015	Time: 08:04
------------------------------	------------------	-------------

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Cook Kimberley C

Comments:

was told by the owner that she is not allowed to stay there and is prob on 23rd and market. 2009

Relation	Name (L,F,M,S)
----------	----------------

Contact Type: Address Change	Date: 05/01/2015	Time: 08:59
------------------------------	------------------	-------------

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Haught Sean P

Comments:

DACS NOTIFICATION : New address has been created on this offender

Relation	Name (L,F,M,S)
----------	----------------

Contact Type: General Comments/PO Notes	Date: 04/28/2015	Time: 08:34
---	------------------	-------------

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Yoder Brandi

Comments:

pass given to interview at Mary Mother of Hope pass from 845-1230pm, dart

Relation	Name (L,F,M,S)
----------	----------------

Contact Type: General Comments/PO Notes	Date: 04/27/2015	Time: 11:10
---	------------------	-------------

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Yoder Brandi

Comments:

let offender call to Mary Mother of Hope to schedule an interview, scheduled for 4/28/15 at 10am

Relation	Name (L,F,M,S)
----------	----------------

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Contact Notes

SBI# : 00384434

Date: 03/16/2020

Name (L,F,M,S): PRUDEN MONIQUE

Institution :

Contact Type: General Comments/PO Notes Date: 04/14/2015 Time: 10:03

Correction flag: No Negative: Yes Negative Contact Reasons: Other

Entered officer (L,F,M,S): Williamson Maryellyn

Comments:

1-04/07/15-This offender was standing in the middle of the room with her shirt off and displaying her bra. She said she was changing it because it is too tight.
Lt. Maffia

2-04/11/15-The officer was informed that a road crew/DOC thermal top was missing from the road crew bin. As soon as she walked in room 7 she noticed this offender was wearing one of the tops because it is clearly marked Road crew on the collar. When the officer told her to give her the shirt, this offender said ?What shirt? I don?t have your shirt?.

Cpl. Santiago 1-Three votes for fourteen days LOAP. PREA announcement is made twenty times a day. Concur.

2-Three votes for seven days LOAP to run consecutively with the first violation. Concur.

Relation Name (L,F,M,S)

Contact Type: Drug/DNA Test Date: 04/08/2015 Time: 16:27

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Cashman Stacey L

Comments:

DACS NOTIFICATION : Johnson, Teresa H has conducted a Urine (Drugs) test for PRUDEN MONIQUE on 04/08/2015 at 16:27

DACS NOTIFICATION UPDATE : Results for Urine (Drugs) test is : NEGATIVE : REQ906677.

Relation Name (L,F,M,S)

Contact Type: General Comments/PC Notes Date: 04/02/2015 Time: 14:00

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Stewart Bianca

Comments:

Pass Placed in duty office: 4/7/2015 DMV 7:45-10:30, car

Relation Name (L,F,M,S)

Contact Type: Drug/DNA Test Date: 04/02/2015 Time: 08:13

Correction flag: No Negative: No Negative Contact Reasons:

Entered officer (L,F,M,S): Cashman Stacey L

Comments:

DACS NOTIFICATION : Brown, April has conducted a Urine (Drugs) test for PRUDEN MONIQUE on 04/02/2015 at 08:13

DACS NOTIFICATION UPDATE : Results for Urine (Drugs) test is : NEGATIVE : 906661.

Relation Name (L,F,M,S)

Affidavit of Daniel C. Breslin Regarding January 11, 2021 and January 21, 2021 interviews with former Delaware Department of Corrections Deputy Warden Darren Carter

I, Daniel C. Breslin, a law clerk¹ employed by the Law Office of Christopher S. Koyste, LLC, personally interviewed former Deputy Warden of Delaware's Department of Corrections,² Darren Carter, on January 11, 2021. I hereby affirm that the within information is accurately described in this affidavit.

On January 11, 2021, Christopher S. Koyste and I interviewed Darren Carter, former Deputy Warden for the DOC. Mr. Carter was employed by the DOC from 1984 to 2012 when he retired. At the time of his retirement, Mr. Carter was the deputy warden for the Baylor Women's Correctional Institution.

During the interview, Mr. Carter described the various phases of the DOC's work release program. Mr. Carter indicated that when inmates flow down from Level V facilities to Level IV facilities, such as the Hazel D. Plant Treatment Center, they are placed in Phase 1 for orientation for seven days.³ Following the orientation period and provided that the inmate follows all of the rules, inmates then move into phase 2. During Phase 2 inmates are allowed to leave the facility with documented pass slip permission from the staff, that is enter into the DOC's computer database, to either go to work, look for employment, or look for housing. Additionally, at phase 2, inmates earn "day passes" that can be used to leave the facility on the weekends, but inmates must return each day at a set hour. If the inmates have obtained employment and the facilities' rules continue to be

¹ I am a 2013 graduate of Widener University School of Law and a member of the Pennsylvania Bar since May 2014.

² Hereinafter referenced as "DOC".

³ Mr. Carter also indicated that an inmate may placed back into phase 1 for disciplinary reasons.

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followed, the inmates will then transition to phase 3. At phase 3, the inmates are given even more leeway and can receive overnight passes that can be used to remain out of the facility in the public for a night or two, but are required to sleep at pre-approved residences in which the address is logged into the DOC's computer database. Mr. Carter described that there are essentially 5 phases in total with each phase having lesser restrictions on the inmates than the preceding phases.

Mr. Carter was then asked to review the documents relating to Monique Pruden's custody status that were received from the DOC in response Judge Rocanelli's March 16, 2020 order. After reviewing the single page Booking Search Report and the two pages of contact notes, Mr. Carter indicated that the records definitively show that Ms. Pruden was in the custody of the Hazel D. Plant Treatment Center on April 14, 2015 when she allegedly witnessed Mr. Thomas engage in the charged criminal conduct.


Mr. Carter was also asked if he could determine from his review of these documents whether or not Ms. Pruden was inside the facility at the time she claimed to observed the criminal conduct of Mr. Thomas. Mr. Carter asserted that the documents support a finding that Ms. Pruden was inside the Hazel D. Plant Treatment Center at the time of the offense and therefore could not have witnessed the crime. In support of this finding, Mr. Carter described that whenever an inmate leaves a level IV facility, the inmate must check in and out with a correctional officer that would be stationed at the exit of the facility. As such, each entry into and exit from the facility is recorded in a "log book". Consistent with this practice, Mr. Carter noted that the contact notes provided by the DOC describe Ms. Pruden's pass to leave the facility on April 28, 2015. However, there is no notation in the contact notes and no other records were provided showing that Ms. Pruden left the facility on April 14, 2015. Thus, in the absence of any records showing that Ms. Pruden left the

facility on April 14, 2015, Mr. Carter asserted that Ms. Pruden was inside the Hazel D. Plant Treatment Center on April 14, 2015 and therefore could not have witnessed the crime.


In a follow up interview on January 21, 2021, Mr. Carter was asked how easy it would have been in September of 2017 for employees of Hazel D. Plant Treatment Center to find out whether Ms. Pruden was inside the Hazel D. Plant Treatment Center on April 14, 2015. Mr. Carter advised that in September of 2017 this answer could have easily been obtained by the employees at the Hazel D. Plant Treatment Center through the DOC database as there would have entry logs in the database recording when Ms. Pruden was given permission to leave the facility as well as when Ms. Pruden left the facility.

I, Daniel C. Breslin, do hereby swear that the above information is true and accurate to the best of my knowledge.

1/22/21
Date


Daniel C. Breslin

Subscribed and sworn to before me this 22nd day of January, 2021.


Christopher S. Koyste, Esquire (#3107)
Delaware Attorney with Notary Public Privileges
pursuant to 29 Del. C. §4323(a)(3)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

**DAMIAN THOMAS,
Defendant.**

I.D. No. 1505012411

**PETITIONER DAMIAN THOMAS' AMENDED MOTION FOR
POSTCONVICTION RELIEF**

Christopher S. Koyste, Esquire (# 3107)
Law Office of Christopher S. Koyste LLC
Attorney for the Petitioner
709 Brandywine Blvd.
Wilmington, DE 19809
(302) 762-5195

Dated: January 22, 2021

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EXHIBITS

Romeo v. State, Del., No. 114, 2010, Ridgely, J. (May 13, 2011) (Order) (Fastcase). . . Exhibit A
State v. Perez, Del. Super., ID No. 1807009079, Karsnitz, J. (Nov. 2, 2020) (Mem. Op. and Or.)
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CERTIFICATE OF SERVICE

TABLE OF CITATIONS

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INTRODUCTION

COMES NOW, Defendant Damian Thomas (“Mr. Thomas”), by and through undersigned counsel, Christopher S. Koyste, hereby moves this Honorable Court, pursuant to Superior Court Criminal Rule 61(a)(1) to reverse his convictions and remand for a new trial.

PROCEDURAL HISTORY

Mr. Thomas was arrested on July 18, 2016 and thereafter indicted for one count each of Murder First Degree, Possession of a Firearm During the Commission of a Felony (“PFDCF”), Possession of a Firearm By a Person Prohibited (“PFBPP”), and Carrying a Concealed Deadly Weapon (“CCDW”). (Docket Entry 1, 3¹).

There were no material pretrial motions. A five day jury trial began on September 11, 2017, with the Murder First Degree, PFDCF and CCDW counts heard by the jury. (DE26, 31, 34). Mr. Thomas waived his right to a jury trial in regard to the PFBPP count. (DE31). The jury found Mr. Thomas guilty of Murder First Degree, PFDCF and CCDW. (DE34). The Court found Mr. Thomas guilty of PFBPP through a bench trial. (DE34). Mr. Thomas was sentenced on November 20, 2017 to a term of life plus 5 years at Level V incarceration. (DE41).

A timely notice of appeal was filed on December 7, 2017. (A270). Following an Opening Brief by Mr. Thomas, a Reply Brief by the State and an Answering Brief by Mr. Thomas, oral argument was held before the Delaware Supreme Court on January 9, 2019. (A267-268). On March 26, 2019, the Supreme Court denied Mr. Thomas’ appeal and affirmed the judgment of the Superior Court. (A267).

On April 18, 2019, Mr. Thomas filed *pro se* Motions for Postconviction Relief, Appointment of Counsel and an Evidentiary Hearing. (DE65, 66, 67). Counsel was thereafter appointed to represent Mr. Thomas in this postconviction proceeding.

¹ The Docket Sheets for Case No. 1505012411 are attached as A1-13 and assigned DE #.

ENTITLEMENT TO RELIEF UNDER RULE 61

Jurisdiction.

Petitioner Damian Thomas is an inmate seeking to set aside his total non-suspended sentence of life plus five years at Level V incarceration for one count each of Murder First Degree, PFDCE, PFBPP, and CCDW. Mr. Thomas raises constitutional claims alleging that his conviction resulted from violations of his right to due process under the Fourteenth Amendment to the United States Constitution and under Article I, § 7 of the Delaware Constitution.

None of Mr. Thomas' claims are procedurally barred.

This Court has jurisdiction to entertain the merit of the claims raised herein, and these claims are not procedurally barred.² Mr. Thomas' motion is made pursuant to Delaware Superior Court Criminal Rule 61. Mr. Thomas' convictions became final on March 26, 2019 when the Delaware Supreme Court affirmed his conviction;³ thus, this postconviction motion is timely.⁴ (DE64).

² Mr. Thomas' postconviction claims are not procedurally barred under Del. Super. Ct. Crim. R. 61(i)(3) or under Del. Super. Ct. Crim. R. 61(i)(4), as Mr. Thomas' claims of due process violation, prosecutorial misconduct and violation of *Brady* obligations have not been previously adjudicated and meet the procedural default exception of Rule 61(i)(3). (*See infra* pp. 32-35, 45-47, 54-55 for a more detailed analysis of the inapplicability of the Rule 61(i)(3) bar.).

³ Del. Super. Ct. Crim. R. 61(m)(2) ("If the defendant files a direct appeal," a judgment of conviction becomes final for the purpose of Rule 61 "when the Supreme Court issues a mandate or order finally determining the case on direct review."); Del. Super. Ct. Crim. R. 61(b)(4) ("A motion may not be filed until the judgment of conviction is final.").

⁴ Mr. Thomas' *pro se* Rule 61 motion for postconviction relief was filed on April 18, 2019. (DE65).

STATEMENT OF FACTS

Offenses.

On April 14, 2015, Deshannon Reid was shot outside, in the vicinity of his home, and succumbed to his injuries three days later. (A45). Mr. Thomas was immediately developed as a suspect in Mr. Reid's homicide, and a warrant was issued for his arrest. (*Id.*). However, following the homicide, Mr. Thomas left the state of Delaware. (A56). On July 6, 2016, Mr. Thomas was stopped by law enforcement in Cherry Hill, New Jersey on an unrelated matter, and the outstanding warrant from the state of Delaware was discovered. (A141-142). Mr. Thomas was later extradited to Delaware and on July 18, 2016, was transported to Wilmington Police Department. (A56). Mr. Thomas spoke with Detective Curley on July 7, 2016, but advised that he did not know anything about the shooting and declined to waive his *Miranda* rights. (A20-30).

Jury Trial and Witness Identifications.

At trial, the State presented three alleged eye witnesses to the homicide-Etta Reid, Leantaye Cassidy, and Monique Pruden. Ms. Reid, the mother of Mr. Reid, testified that she and her son Deshannon were sitting on the front porch of their home at around 9:00pm when Mr. Thomas joined them and attempted to speak with Mr. Reid. (A86-87). Mr. Reid was not interested in speaking with Mr. Thomas, according to Ms. Reid, as Mr. Reid was in the midst of an argument with the mother of his child. (*Id.*). According to Ms. Reid, Mr. Thomas then left and walked up 27th Street toward Market Street but returned to her porch approximately five minutes later. (A88).

Ms. Reid testified that at that point, Mr. Reid and Mr. Thomas spoke briefly, with Mr. Reid eventually exclaiming "Man, I told you I don't have anything for you." (A88). Both men then left the porch and while arguing, walked up 27th Street toward Moore Street, stopping two houses from

the corner. (A89). Ms. Reid believed them to be arguing over drugs, as she acknowledged her son had been a drug dealer for many years. (A88-89). She testified that she then saw her son walk across 27th Street, heard shouting from people, heard gun fire, followed by her son falling down in the middle of the street. (A89). According to Ms. Reid, Mr. Thomas then stood over Mr. Reid and shot him two more times before running through the parking lot of Pete's Pizza. (A89). Ms. Reid testified that her son got up and staggered over to the side of the street before eventually collapsing. (A90, 93). Ms. Reid testified that she never saw a gun. (A89-90, 93). Ms. Reid gave two recorded pre-trial statements on April 14, 2015 and April 15, 2015. (A56).

Ms. Cassidy testified that she was living with a friend in an apartment across the street from Ms. Reid's home. (A102). Ms. Cassidy reported that on the night of the shooting, she had a migraine and was therefore staying in a different bedroom in the apartment, as this other bedroom had air conditioning. (A103). According to Ms. Cassidy, this bedroom was in the front of the home and enabled her to look out onto 27th Street when she heard arguing. (A104). Ms. Cassidy reported seeing Mr. Thomas shoot Mr. Reid twice and testified that Mr. Reid crawled from the middle of the street to the side of the street. (A106-107, 114). Ms. Cassidy was adamant that the shooting occurred on the side of the street opposite from where Ms. Reid testified it occurred and was likewise adamant that Mr. Reid never stood up again after being shot, as Ms. Reid testified, but rather crawled until he came to rest in front of a house. (A114, 118, 123-124). According to Ms. Cassidy, Mr. Thomas was wearing a black windbreaker with a hood but that the hood was not up. (A109, 120). Ms. Cassidy did not speak with police about what she allegedly saw until two years after the shooting. (A110). Ms. Cassidy gave one recorded pre-trial statement on July 13, 2017. (A59).

The testimony, pre-trial and post-trial statements of the State's third alleged eye witness, Monique Pruden, are central to this postconviction motion and are therefore explained in greater detail below.

The State also called a prison informant, Brandon Lacurts, to testify during its case-in-chief. Mr. Lacurts and Mr. Thomas were cellmates following Mr. Thomas' arrest for the charged offenses. (A148). Mr. Lacurts testified that Mr. Thomas told him he shot Mr. Reid. (A148-149). Mr. Lacurts did not enter into a cooperation agreement with the State to assist in the prosecution of Mr. Thomas but has a history of entering into such agreements with the State in other cases. (A144-145, 149-153). Mr. Lacurts also acknowledged during cross-examination that while cellmates, he had the ability to see materials about the case that were sent to Mr. Thomas by his attorney. (A156-157, 161).

Additionally, the State presented surveillance video from nearby Crestview Apartments, where Mr. Thomas' girlfriend lived, that purportedly showed Mr. Thomas entering and leaving the apartment building shortly after 9:30pm. (A131-134). The State also presented surveillance videos from Pete's Pizza that showed individuals walking on 27th Street and Market Street around the time of the shooting, but the individuals were not easily identifiable. (A129, 137). The videos did not depict anyone running away from the crime scene. (A135).

First Statement of Monique Pruden.

On June 16, 2015, Chief Investigating Officer ("CIO") Detective Curley spoke with Monique Pruden. This interview was recorded, per Detective Curley's July 18, 2017 master report. (A46, 50). Neither this disc nor transcript was included in the file provided to Rule 61 Counsel from trial counsel via the Office of Conflict Counsel, nor was it listed in any of the discovery cover letters that

accompanied discovery sent to trial counsel. (A34-42, 61-73, 81-82). As such, on January 5, 2021, Rule 61 Counsel requested via email that DAG Lugg provide Counsel with a copy of this missing disc. On January 8, 2021, DAG Lugg provided Counsel with a transcript of Ms. Pruden's first statement to Detective Curley and on January 12, 2021, provided Counsel with a copy of the disc.

A summary of Ms. Pruden's statement was included in Detective Curley's master report, as follows:

I conducted an interview with Pruden on 6/16/15 at the Wilmington police station. This interview was recorded. Pruden advised that she knows the victim, Shannon and "Mutt." She said Shannon was the weed man and "Mutt" would buy weed off of him. She has since heard "Mutt" owed Shannon money. She explained that she was near Pete's Pizza when she heard the gunshots and then "Mutt" ran past her onto Market Street. She did not see a gun in his hand, but stated he could have put it into his waistband by then. Pruden was shown a six person photo line-up, and she positively identified Damian Thomas as "Mutt." She arrived at the scene and there were people around the victim. She explained that everyone was saying it was "Mutt" who had just shot Deshannon.

Two individuals who she said she saw at the scene were Jonnise Harris and Antoine Bush.

For additional details, see recorded interview. (A50).

The transcript of Ms. Pruden's June 16, 2015 interview provided to Counsel by DAG Lugg shows Ms. Pruden stating, in relevant part, that "Shannon was the weed man" and "Mutt" would buy weed off of Shannon and that on the day of the shooting "Mutt owed him a couple dollars and then he started disrespecting Mutt or whatever. . . .". (A14). Ms. Pruden referenced several people being around that day discussing what happened. (A15). When Detective Curley asked Ms. Pruden where exactly she was when shots were fired, she responded:

I'm coming from Washington Street. By that time I'm cutting through - - I just cut through Pete's - - on 27th Street across from Pete's shop. By the time Mutt probably ran - - came right through the lot and ran right past us. But he didn't have no gun or

nothing in his hand. And everybody - - next, you know, you're hearing it all, like (UI) people gathered around all that kind of stuff, and we turned back to walk around. And Shannon was dead on the ground. (A15)

Ms. Pruden stated on June 15, 2016 that she did not see the actual shooting but that she heard shots and then Mutt ran past, cutting through Pete's parking lot and running up Market Street, and that afterward, "everybody was saying that it was Mutt." (A16). When Detective Curley asked Ms. Pruden if she remembered hearing screaming or yelling, she responded that everybody was saying that Deshannon and Mutt were arguing. (A16). Ms. Pruden stated that she did not see Deshannon's mother anywhere and that this incident was "the whole talk of all over the neighborhood." (A17).

Second State of Monique Pruden.

On September 15, 2017, DAG Puit sent an email to trial counsel in which she wrote:

. . . Today we also interviewed Monique Pruden. She was previously interviewed ny [sic] Detective Curley and her interview was provided to you. A transcript of her previous interview was also previously provided. When re-interviewing Ms. Pruden she indicated she saw the shooting and that 'Mutt shot Shannon'. This second interview was recorded and I received a copy of this interview this evening. Please let me know the best way to get a copy of this interview to you tomorrow. (A73).

The following day, DAG Puit emailed trial counsel the recorded statement of Monique Pruden that was taped on September 16, 2017. In her statement, Ms. Pruden stated, in relevant part, that despite what she said in her previous statement to Detective Curley, she did actually witness the shooting. (A79-80). Ms. Pruden stated that she was on 27th Street near Mr. Reid's house when he was shot. (A74). She reported that Mr. Reid and Mutt were arguing about marijuana when Mr. Reid spit on Mutt, and Mutt responded by saying that he would be back and then taking off. (A74, 75). According to Ms. Pruden, Mutt then walked towards Market Street and when he returned about five minutes later, he and Mr. Reid started arguing again until Mr. Reid turned around and started walking

off. (A75-77). Ms. Pruden stated that she then heard shots and Mutt ran past her through the parking lot of Pete's Pizza. (A75). However, she stated later in the interview that she saw Mutt pull out a gun. (A77). This time, when asked if she saw Mr. Reid's mother on the porch, Ms. Pruden responded yes. (A75).

Testimony of Monique Pruden.

On September 18, 2017, DAG Zubrow called Monique Pruden to testify during its case-in-chief. (A166). In relevant part, Ms. Pruden testified on direct examination that she was "present on the block the night that Deshannon Reid was killed." (A168). She admitted on direct examination that her 2015 statement to Detective Curley would be inconsistent with her soon-to-be-given in-court testimony, explaining, as the reason for the inconsistencies, "at the time I just was afraid, and I didn't want anything to do with it." (A168-69). In explaining what she allegedly saw, Ms. Pruden testified, "I was on 27th Street. I was standing there by the church, and I heard Shannon and Mutt. They were arguing. They were on the sidewalk in front of Shannon's house - -." (A169). Ms. Pruden thereafter identified Mr. Thomas as "Mutt" by pointing him out the jury. (A169). Ms. Pruden then continued with her testimony, and the following exchange with DAG Zubrow occurred:

A. They were arguing, and then they were arguing on the sidewalk.

Q. Where on the sidewalk?

A. Like, in front of Deshannon's house, and then Deshannon spit on Mutt. After that, they were - - he said, "Mother fucker, I'll be back.

Q. Who said that?

A. Mutt, and then, I would say five minutes went by. He came back. They were still arguing again. (A170).

According to Ms. Pruden, "Mutt walked right by her in the direction of Market Street" and was gone for "about five minutes" before he returned. (A170-171). Ms. Pruden further testified that Mr. Reid and Mr. Thomas resumed arguing, that Mr. Reid was "waving his hands around" and that Mr. Thomas had a gun and "[w]hen Deshannon turned around, he [the defendant] pulled it out and he started shooting." (A171). She stated that she saw the gun come out, heard the shots, and saw "Mutt's" hand extended. (A172). Ms. Pruden testified that "after he shot Deshannon Reid", Mutt "ran through Pete's parking lot." (A172). She further averred that she was familiar with Mutt before all of this happened, that she had no problem seeing any of the events that night and that she was testifying from what she saw that night. (A173).

On cross-examination, trial counsel asked Mr. Pruden, "It is your testimony today that you saw everything?". (A176). Ms. Pruden responded "Yes.". (A176). Trial counsel then inquired of Ms. Pruden, "It's your testimony today that you were on 27th & Market on October the - - on April the 14th, 2015, correct?". (A176). Ms. Pruden responded "Yes.". (A176). She specified that she "was standing on 27th by the church, not exactly in front of the church, but closer to Deshannon's home, on the same side that Shannon lives on." (A176). Ms. Pruden testified that she did not see Deshannon's mother, Ms. Reid, outside that day. (A179, 182). Thereafter, the following exchange occurred between trial counsel and Ms. Pruden:

Q. And you said earlier you told the police you only heard the shooting, but this time you're saying that you saw the shooting, correct?

A. I saw it the first time. I didn't want anything to do with it.

Q. Okay, and the testimony that you're giving, you're giving this under oath, right?

A. Yes

Q. And this is the hundred percent the truth, the whole truth and nothing but the truth?

A. Yes.

Q. And how sure are you of that?

A. Cause I was there.

Q. You were there. Is there anything that I could say to make you think that you weren't there?

A. I guess you will; won't you?

Q. No, I'm just asking you.

A. No, you cannot. (A182-183).

Trial counsel then asked Ms. Pruden if she was in WCI on April 7, 2015, to which Ms. Pruden responded yes. (A183). Trial counsel then requested a recess, at which point trial counsel stated:

Your Honor, here's where we are in this matter. Miss Pruden has testified that she was present on April the 14th, 2015 at - - on Market Street and 27th. We have evidence to show that on April the 24th, 2015, she was sentenced by Judge Streett to 3 months at Level V. Her release date would have, and it is, 4/27/15 - - 4/29/15, Your Honor.

I've shown the State a copy of the inmate locator. There's an inmate locator that is sent that shows every person that is incarcerated on a certain day in the State of Delaware. I've pulled the date to show that on April the 13th, 2015, Miss Pruden was in the custody of the Department of Corrections in the Hazel Plant Correctional Center at WCI on Baylor on February 13, 2015.

I pulled the date to show that Miss Pruden was also in custody at the Department of Corrections on April the 15th, 2015. I show - - I also pulled the date that says that she was in custody on April the 29th, 2015, and I pulled the records to show that she was no longer in custody on May 1st, 2015.

I have the Sentencing Order, Your Honor. I have the Court's commitment paper, and I also have the violation report that was filed on 6/9/2015 that also says that she was released from custody on May 1st, 2015 and was violated for failure to report to

Level III probation, that is currently pending, cause she was out on capias since that time. (A185-186).

DAG Zubrow advised that they had never seen those records before and needed time to review them. (A187). DAG Puit also agreed to provide trial counsel with the DELJIS records that would show Ms. Pruden's actual release date from custody. (A187). Upon returning from recess, DAG Zubrow stated "I believe everyone is on the same page now, that she was at Hazel D. Plant Center. Mr. Armstrong will cross-examine her about that facility and what inmates can or can't do, and the State will redirect." (A187).

During trial counsel's resumed cross-examination of Ms. Pruden, she adamantly refused to acknowledge that she was in the custody of the Department of Corrections ("DOC") on the day of the shooting; instead, she insisted that she was working at Deal\$ in April 2015 from 12:00pm-5:00pm and was living at 303 West 29th Street. (A189-192, 195-202). Ms. Pruden further stated that she had been sentenced to probation, despite the sentence order showing that she received Level V time and that trial counsel was wrong in stating she was released from custody on April 29, 2015. (A193-194, 196). When trial counsel asked Ms. Pruden whether, factoring in good time, she was released from custody on April 29, 2015, Ms. Pruden insisted he was incorrect, stating "It wasn't April 29th. You're trying to say I was in jail when this went down, but I was not." (A195-196).

When trial counsel questioned Ms. Pruden on her violation paperwork, which stated she had been released from custody on May 1, 2015 and that she did not live at the address she had provided, 303 West 29th Street, Ms. Pruden became increasingly hostile in her responses. (A206-210). When trial counsel specifically asked, "I want to know if you were incarcerated on April the 14th, 2015",

Ms. Pruden responded "No". (A210-211). Trial counsel followed up this question by asking "Even though the documents say that you were?". Ms. Pruden responded "Yes." (A211).

Regarding the rules of Hazel D. Plant pertaining to curfew and work release, the following exchange occurred between trial counsel and Ms. Pruden:

Q. And you said you've been -- you've done Hazel Plant before?

A. Yes, I have.

Q. All right. Part of the rules is that there's a curfew, right?

A. Yes.

Q. What time's the curfew?

A. Well, 10:00.

Q. 10:00.

A. But I never -- I wasn't in at 10:00.

Q. So, you weren't in there at 10:00?

A. No, I was not.

Q. And they also have phases in order for you to get out and go on work release, right?

A. Yes.

Q. All right, and when you were at Hazel Plant, did you ever make -- what phase did you make in those two months that you were there?

A. It wasn't work -- I had got -- I went home, because I had maxed up. So, I didn't have to end up making any phases.

Q. So, you never -- you went home after you maxed out on April the 29th, 2015; isn't that correct? That's when you maxed out, right?

A. If you say so.

Q. That's exactly when you maxed out; isn't it?

A. No, it's not. (A211-212).

On redirect examination, DAG Zubrow read a description of Hazel Plant which noted that the facility has "work release as a component." (A214). During re-cross examination, trial counsel asked Ms. Pruden whether she spoke with the police on April 14th, 15th or 16th. (A215). DAG Zubrow objected, arguing that the questions were beyond the scope of re-cross. (A216). However, trial counsel responded that he would simply call her as a hostile witness during the defense's case-in-chief. (*Id.*). In permitting trial counsel's questions, the Court concluded that "[g]iven the seeming uncontroverted facts where she was the day of the alleged murder, the testimony to the contrary, I'll overrule the objection, because I think -- Mr. Armstrong says he could call her as a defense witness, if he chose to." (A216-217).

After the jury left for lunch recess, DAG Puit advised the Court that they were "also going to be looking for some information from the records that we just got from Mr. Armstrong during break." (A221). Presumably, the prosecutor meant the records regarding Ms. Pruden's custody status on the date of the homicide. Subsequently, trial counsel advised the Court that he may call someone from the Department of Correction as a defense witness. (A224). In response to the Court questioning whether it could potentially be worked out by stipulation between the parties, DAG Puit responded:

I think hopefully. I think the issue just becomes as to what information -- again, thank you to the Court for granting us that recess, but we weren't able to get everything that we wanted to know because we just can't reach everyone in the facility. So, I can relay that information to Mr. Armstrong and see if we can work out any. (A225).

Reconvening after the lunch recess, DAG Puit advised the Court that in regard to their last witness:

We are scrambling to try and get some information, and as Your Honor can probably guess, it was lunchtime when we were trying to get in touch with people. I anticipate that we might need to ask to recess early today, and tomorrow morning, either call our last witness or rest, and I apologize for the delay. We've done everything in our power to try and make it happen today. (A227).

Mr. Armstrong responded:

They actually have, Your Honor. They called the Plummer Center and Hazel Plant. The reason I know is because we called as well, and they told us that they were getting phone calls. Apparently, the Deputy Warden who is in charge is not in today, or we don't know if we can get it or whatever. We do not oppose continuing today, starting up tomorrow. We kind of know how it's going to figure out, so we don't care. (A227.).

The following day, September 19, 2017, trial counsel advised the Court that the defense had no witnesses to call. (A232). There was no discussion from either party about calling someone from the Department of Correction as a witness and there was no further discussion of Ms. Pruden or her whereabouts on April 14, 2015. (A232). However, during closing arguments, DAG Puit stated:

Now, ladies and gentlemen, the State anticipates Mr. Armstrong is going to discuss the inconsistencies in Etta, Taye and Monique's statements, talk about the inconsistencies in the distance of how far they were and where exactly they were in the street.

He's going to talk to you about Monique. Monique was emphatic that she was out there. You heard Mr. Armstrong question her about her time at Hazel D. Plant Center.

You are going to be instructed that you will be the sole judges of credibility in this case (A235).

Thereafter, during rebuttal argument, the DAG Puit stated:

Mr. Armstrong says to you that it is without a doubt that Monique Pruden was in jail. I think he writes jail up there five or six times. She's emphatic. She sits up there.

She's there. The State submits to you, the records says she's at Hazel D. Plant, not jail, Hazel D. Plant. (A240).

Trial counsel immediately objected, arguing:

At this point, the State is trying to insinuate that Hazel D. Plant is not a jail. It actually is a jail housed at WCI. That is a total misrepresentation of the facts. (A240).

Thereafter, the following exchange occurred:

THE COURT: Is the State suggesting, because it should know, that she was out on work release or was at liberty or not in a custodial section?

MS. PUIT: I think the answer is no one knows. I think we can argue they put into evidence it's a work release facility.

THE COURT: I know defense put that into evidence, but does the State believe that she was at liberty in some fashion on April 14, 2015?

MS. PUIT: I do not know.

THE COURT: Well, I think it's the State's - - the State is in control of the Department of Corrections. I don't think the State should be permitted to suggest, just because this document was put into evidence, it was partially a work release facility, which probably is --

MS. PUIT: Your Honor, sorry to interrupt.

THE COURT: Go ahead.

MS. PUIT: On cross-examination said she has a job at Deals on Miller Road in April of 2015.

THE COURT: What has the State found out from the Department of Correction as to where she was on April 14?

MS. PUIT: I do not have an answer. All I know is that she was at Hazel D. Plant, and I don't have a definitive answer. That's what we were trying to get, and I can't get it.

MR. ARMSTRONG: That is a Level V facility, Your Honor. The State is now saying that it's not. It's a prison.

THE COURT: I think just because that document was put into evidence that suggests that it can be a work release referral, it is incumbent on the State, maybe just because personnel at the Department of Correction weren't there in the last couple of days, when this 24 hours almost when this came to light, I don't think the State should be able to suggest that she might have been able to leave without affirmative proof, given the seriousness of this that the defendant - - I think it's stated another way, I think the State is bound by the weight of the facts developing this case, that she was in prison on April 14, and I'm just going to preclude the State from arguing to the contrary.

The State is the one on this important issue that should be able to tell the Court whether or not she was in prison. If you say you can't tell that one way or the other, I'm not going to allow an argument to the contrary. (A240-241).

DAG Puit stated that the State disagreed but would move on. (A241). However, trial counsel requested that the record be corrected, noting "She has said that she was not in jail; she was at Hazel D. Plant, which leads the jury to believe she is not in jail. That needs to be corrected, Your Honor." (A241). DAG Puit disagreed. (A241). However, the Court concluded a correction was warranted, noting:

Well, then I think the State should have put on some evidence that she was in the work release program or had the ability to leave, other than this document. I have to find the question because the State never argued until right now in rebuttal, there was a theoretical opportunity of her to not have been at Hazel D. Plant.

I'm going to instruct the jury that Hazel D. Plant is a secure facility because I think it was incumbent on the State, having called her as a witness, found out the fact it did, to have shown one way or the other that she was in the custodial situation at Hazel D. Plant or not.

So I'm going to instruct the jury that for the background facts, Hazel D. Plant is a, in fact, a jail. (A241).

Thereafter, the Court stated: "Members of the jury, I instruct you that Hazel D. Plant facility is a jail." (A241).

Postconviction Statement of Monique Pruden.

In light of the aforementioned, Rule 61 Counsel employed a private investigator to speak with Ms. Pruden. On March 19, 2020, Investigator Michael Wiant conducted a recorded interview⁵ with Ms. Pruden, at which time Ms. Pruden stated: "I wasn't there." (A288). Ms. Pruden explained that she was in DOC custody at the time of the shooting at Hazel Plant and that she was not working at the time. (A289). When Investigator Wiant asked Ms. Pruden "you're positive that you were not at the scene when this happened", Ms. Pruden responded "I'm positive." (A289). When asked how she was positive about that, Ms. Pruden responded "[b]ecause I was in jail." (A289).

Investigator Wiant then inquired "Why, why would you tell them that you were there when you weren't there? Where you trying to - -", to which Ms. Pruden responded:

No. It - - I don't really want to explain it. But it was just at the time, it was something going on, and they was just like no. You know, how people wanted you to - - I don't know. I just - - I shouldn't have did what I did . . . I really shouldn't. And you know, I - - I wish I didn't. (A289).

Thereafter Investigator Wiant inquired "[s]o was - - were you - - were you in trouble at the time? Or had you been in any kind of uh, situation with, with police or anything like that?" (A289). Ms. Pruden responded "[s]omething. Yeah, something like that. Pretty much, yeah." (A289). When asked whether she was working at Deal\$ at that time, as she testified she was, Ms. Pruden responded that she did work at Deal\$ but not at the time that she was in DOC custody. (A289-290). When Investigator Wiant asked how Ms. Pruden had information to give the police if she was not there, she responded "[b]ecause the person that was there that I know." (A290). Ms. Pruden refused to give the name of this person. (A290). Ms. Pruden further advised that she gave information to Officer

⁵ A transcript of this interview is attached at A288-292.

McKenzie about Mr. Reid's homicide when she was at the police station being questioned in another case after the officers asked about Mr. Reid's homicide case. (A290). Ms. Pruden did not believe that this conversation was recorded and did not recall when it occurred, other than that it did not occur on the night of the incident. (A291). Ms. Pruden further reported that no one from the Attorney General's Office spoke with her prior to trial. (A291).

In concluding the interview, Investigator Wiant explained that it was important that Ms. Pruden be completely honest with him, and the following exchange occurred.

WIAINT: Yeah. Like I said, I'm not the police, you know.

PRUDEN: Right. Right.

WIAINT: So if you were there, you were there. If you weren't, you weren't. I want to know the - -

PRUDEN: Right.

WIAINT: - - the truth.

PRUDEN: Right. Right.

WIAINT: So is you - - you weren't there - - you weren't even close by that thing?

PRUDEN: Nope, mm-mm.

WIAINT: Okay. And when you were in court that day, um, do you remember thinking about whether you shouldn't testify to this, or you should, or - -

PRUDEN: Yeah, I remember. Yeah, I shouldn't - - like, yeah, I - - yeah. I regret that I did.

WIAINT: Did you - - when you were going through the process - -

(Phone rings.)

WIAINT: Sorry about that. Did, um - - were you having, having second thoughts beforehand? How come you didn't say anything - -

PRUDEN: Ahead of time?

WIANT: Yeah, like when you - -

PRUDEN: It was like it was too late. It was like it was just, like, too late.

WIANT: Okay. All right. Did anybody talk to you about it afterwards or anything like that?

PRUDEN: No. (A291-292).

Investigator Wiant has been unable to make contact with Ms. Pruden for a follow-up interview.

Direct Appeal.

On direct appeal, trial counsel raised two issues: 1) the Superior Court abused its discretion in permitting Detective Curley to opine that Mr. Thomas was the person depicted in one of the Pete's Pizza surveillance videos taken in the vicinity of and from around the time of the shooting; and 2) there was insufficient evidence to convict Mr. Thomas of CCDW. (A275). Although the Delaware Supreme Court noted that the Court had "serious reservations about the admission of this type of identification testimony", the Court held "under the particular facts of this case, we stop short of finding an abuse of discretion in the Superior Court's evidentiary ruling." (A277). The Court likewise denied Mr. Thomas' second appellate claim. (A282).

Pro Se Rule 61 Motion for Postconviction Relief.

Mr. Thomas filed a *pro se* Motion for Postconviction Relief alleging three claims of ineffective assistance of counsel all pertaining to Ms. Pruden's false testimony. (A286-287).

CLAIM I. MR. THOMAS' RIGHT TO DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, § 7 OF THE DELAWARE CONSTITUTION WAS VIOLATED WHEN HIS CONVICTION WAS TAINTED BY THE USE OF PERJURED TESTIMONY.

A State violates the Fourteenth Amendment right to due process when it “knowingly presents or fails to correct false testimony in a criminal proceeding.”⁶ The United States Supreme Court has held that if there is “any reasonable likelihood that the false testimony could have affected the judgment of the jury”, the conviction must be set aside.⁷

As explained below, Mr. Thomas was deprived of his United States and Delaware constitutional rights to due process of law⁸ when the perjured testimony of Monique Pruden was used

⁶ *Haskell v. Superintendent Greene SCI*, 866 F.3d 139, 146-147 (3d Cir. 2017); *see also Lambert v. Blackwell*, 387 F.3d 210, 242 (3d Cir. 2004); *United States v. Williams*, 974 F.3d 320, 355 (3d Cir. 2020); *Romeo v. State*, Del., No. 114, 2010, Ridgely, J., at 7 (May 13, 2011) (Order) (Fastcase) (attached as Exhibit A) (“We have explained that the State’s knowing use of false or perjured testimony violates due process.”); *Weber v. State*, 457 A.2d 674 (Del. 1982) (. . . “[I]t is now axiomatic that a conviction may be invalid under the fourteenth amendment if a prosecutor has knowingly elicited false testimony relating to a witness’ credibility or if the prosecutor has knowingly allowed the witness to testify falsely.”) (citing *United States v. Agurs*, 427 U.S. 97, 103 (1976), *Giglio v. United States*, 405 U.S. 150 (1972), *Napue v. Illinois*, 360 U.S. 264 (1959), *Alcorta v. Texas*, 355 U.S. 28 (1957)).

⁷ *Agurs*, 427 U.S. at 103, holding modified by *United States v. Bagley*, 473 U.S. 667 (1985); *Haskell*, 866 F.3d at 145, 147 (holding that when the State has knowingly presented or failed to corrected perjured testimony, “a petitioner carries his burden when he makes the reasonable likelihood showing required by Giglio and Napue” as opposed to the “actual prejudice” showing required by Brecht) (citing *Giglio*, 405 U.S. at 154 (citing *Napue*, 360 U.S. at 271); *Brecht v. Abrahamson*, 507 U.S. 619, 637–38 (1993)); *Romeo*, No. 114, 2010, at 7-8 (“In the event that the State knowingly uses false or perjured testimony to obtain a conviction, the United State Supreme Court has held that the conviction ‘must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.’”); *Jenkins v. State*, 305 A.2d 610, 616 (Del. 1973) (noting that *Napue* applies to the knowing use of false or perjured testimony).

⁸ U.S. Const. amend. XIV; Del. Const. art. I, § 7; The Delaware Supreme Court has held that the phrase “due process of law” as found in the Fourteenth Amendment and the phrase “law of the land” as found in Article I, § 7 of the Delaware Constitution are synonymous and both incorporate the concept of fundamental fairness. (*Moore v. Hall*, 62 A.3d 1203, 1208 (Del. 2013); *Gann v. State*, 2011 WL 4985701, at *2 (Del. Oct. 19, 2001) (“[F]undamental

by the State in securing convictions against Mr. Thomas for Murder First Degree, PFDCF, PFBPP, and CCDW, as this perjured testimony was negligently, if not knowingly, presented by the State and because it was allowed to go uncorrected. As there is a reasonable likelihood that the false testimony could have affected the judgment of the jury, Mr. Thomas' convictions must be set aside.

A. Monique Pruden committed perjury.

"A witness commits perjury if he or she 'gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.'" Ms. Pruden testified that she witnessed Mr. Thomas shoot Mr. Reid on April 14, 2015. (A169-173). Yet, the evidence conclusively demonstrates that Ms. Pruden was in DOC custody at Hazel Plant at the time of the shooting and did not leave the facility on that date, making it impossible for Ms. Pruden to have witnessed the shooting, as she testified.

As an initial matter, the documentation revealed by trial counsel during Ms. Pruden's testimony showed that Ms. Pruden was in DOC custody at Hazel Plant at the time of the shooting. (A244-261). However, because the State suggested at that time, without evidence, that Ms. Pruden had the ability to leave on work release and therefore theoretically had the ability to witness the shooting,¹⁰ Counsel conducted an investigation to conclusively determine whether Ms. Pruden was or was not in custody at the time of the offense and whether, even if in custody, Ms. Pruden had the ability to leave on a work release situation. The results of Counsel's investigation demonstrate that

requirements of fairness which are the essence of due process govern all judicial proceedings."); *Hammond v. State*, 569 A.2d 81, 87 (Del. 1989) (recognizing "fundamental fairness, as an element of due process" under Article I, § 7 of the Delaware Constitution)).

⁹ *United States v. Hoffecker*, 530 F.3d 137, 183 (3d Cir. 2008) (quoting *United States v. Dunnigan*, 507 U.S. 87, 94 (1993)); see also *Williams*, 974 F.3d at 355.

¹⁰ A214, 235, 240-241.

Ms. Pruden was in fact in DOC custody at Hazel Plant at the time of the offense and that she did not have the ability to, and did not in fact, leave the facility on the night of the offense.

Investigator Wiant spoke with Ms. Pruden on March 19, 2020, and as noted above,¹¹ Ms. Pruden stated that she was positive that she did not see the shooting, because she was in DOC custody at Hazel Plant at that time and because she was not working anywhere at the time which would have permitted her to leave the facility. (A288-289). Although Ms. Pruden testified that she was employed at Deal\$ at the time of the shooting and was therefore permitted to leave the facility for work, Ms. Pruden advised Investigator Wiant that her employment with Deal\$ occurred later and that at the time of the offense, she was not in fact working. (A289-290). Ms. Pruden openly admitted to Investigator Wiant that she lied when she testified that she saw the shooting and indicated to him that the information she provided to law enforcement and to the jury was based upon information she received from individual(s) in the neighborhood. (A290).

Ms. Pruden also indicated that she initially provided information to Office McKenzie at the Wilmington Police Department, presumably prior to her June 15, 2015 statement to Detective Curley, while she was being interviewed in relation to another case. (A290-291). As Ms. Pruden did not provide any further information on this initial discussion with Officer McKenzie and Investigator Wiant was unable to make contact with Ms. Pruden again for a follow-up interview, Counsel has been unable to obtain any further information on this alleged initial statement to Officer McKenzie.

Counsel additionally obtained documentation from DOC to corroborate Ms. Pruden's statements to Investigator Wiant. Pursuant to this Court's March 16, 2020 Order granting Mr. Thomas' Motion for Issuance of a Subpoena *Duces Tecum*, DOC turned over to Counsel on March

¹¹ See *supra* pp. 18-20.

27, 2020 three pages of records pertaining to Ms. Pruden's time in DOC custody around the time of the offense. (A293-296). These three pages include one page of a "Booking Search", which shows that Ms. Pruden was admitted to custody on March 25, 2015 and was released from custody on April 29, 2015. (*Id.*). The DOC records also include two pages of "Contact Notes" that show on April 7, 2015, Ms. Pruden was given a pass to leave the facility and on April 28, 2015 was given a pass to leave the facility to interview at Mother Mary of Hope. (A295-296).

Counsel and a member of Counsel's staff conducted two interviews with Darren Carter,¹² a former Deputy Warden of Delaware's Department of Corrections for the Baylor Women's Correctional Institution, who confirmed that the listing of dates showing when Ms. Pruden was given a pass to leave the facility, combined with the lack of a listing showing that Ms. Pruden was given a pass to leave the facility on April 14, 2015, establishes that Ms. Pruden did not leave the facility on April 14, 2015, the day of the homicide. (A298-299). As Mr. Carter explained, an inmate must check in and out with a correctional officer stationed at the exit of the facility whenever an inmate leaves a Level IV facility. (A298). Each entry into and exit from the facility is then recorded in a "log book." (A298). Consistent with this practice, Ms. Pruden's DOC contact notes indicate that she was given a pass to leave the facility on April 28, 2015. (A295-296, 298). Thus, Mr. Carter was able to conclude that absent any records indicating Ms. Pruden was given a pass to leave the facility on April 14, 2015, Ms. Pruden did not, in fact, leave Hazel D. Plant. (A298-299).

Ms. Pruden's statements to Investigator Wiant acknowledging that she was not employed by Deal\$ on April 14, 2015 combined with the records produced by DOC showing that Ms. Pruden did

¹² Affidavit from Daniel C. Breslin, Esquire regarding interviews with Former Deputy Warden Darren Carter is attached at A297-299.

not have a pass to leave the facility on April 14, 2015 and was still seeking employment on April 28, 2015, leave little doubt that Ms. Pruden was *not* employed by Deal\$ on April 14, 2015. Nevertheless, Investigator Wiant made numerous attempts to obtain Ms. Pruden's relevant employment records from Deal\$ for the time of April 2015. However, Investigator Wiant was advised that a subpoena is required to obtain those records.¹³

In light of the aforementioned, it is clear that on April 14, 2015, Ms. Pruden was in DOC custody at Hazel D. Plant Treatment Center and was not permitted to, and in fact did not, leave the facility on that date. Furthermore, Ms. Pruden has admitted to Investigator Wiant to providing false testimony and expressed regret in doing so, noting that she felt it was too late to admit the truth before testifying falsely. As such, Ms. Pruden indisputably committed perjury during Mr. Thomas' trial.

B. The State knew or should have known that Ms. Pruden's testimony was false.

According to Ms. Pruden, no one from the Attorney General's Office spoke with her prior to trial. (A291). However, law enforcement spoke with Ms. Pruden as early as June 2015, and Detective Curley spoke with her again mid-trial. (A14, 74). The docket sheet also indicates that Ms. Pruden was served with a subpoena to appear at trial on August 29, 2017. (DE22). Thus, it is clear that the State had intent to call Ms. Pruden as a witness prior to trial and that the State had ample opportunity to check the criminal records for Ms. Pruden. Furthermore, it appears that the State did perform at least a rudimentary check of Ms. Pruden's criminal history, as DAG Zubrow asked Ms.

¹³ As such, a Motion for Issuance of a Subpoena *Duces Tecum* will be filed at a later date, so that Counsel may obtain Ms. Pruden's employment records from Deal\$ for the time of April 2015 to irrefutably establish that Ms. Pruden was not working at Deal\$ on April 14, 2015.

Pruden on direct examination about her prior convictions. (A174). As such, it is unclear how the State could be unaware that Ms. Pruden had been in custody at the time of the shooting.

Notably, on direct examination, the State asked Ms. Pruden about her conviction for Aggravated Menacing. (A174). Her docket sheet from her Aggravated Menacing case shows that on February 9, 2015, Ms. Pruden was committed to the Department of Corrections with bail set at \$10,000 cash. (A246 at Docket Entry 21). The next entry on the docket sheet shows that Ms. Pruden had a violation of probation hearing before Judge Streett on February 24, 2015 at which time she was sentenced. (A246 at Docket Entry 22). Based on the docket sheet alone, it was grossly negligent for the State to not have checked to see if Ms. Pruden was still in custody at the time of the shooting, when it was blatantly obvious from the docket sheet that she had been committed on February 9, 2015 and sentenced for her violation of probation on February 24, 2015.

Moreover, despite the fact that the State *should have known* that Ms. Pruden's testimony was false during direct examination, as the State must have pulled some of her criminal history records, the State *actually knew* once trial counsel explained what he had found out and showed the State the inmate locator sheets showing Ms. Pruden in custody on April 13, 2015, April 15, 2015 and April 29, 2015, the sentence order, the Court's commitment paper, and the violation report. (A185-186, 244-261). Moreover, following this disclosure, the State agreed that during the recess they would pull Ms. Pruden's DELJIS records, as it would show her actual release from custody date. (A187). Furthermore, once the State came back from the recess, they advised "I believe everyone is on the same page now, that she was at Hazel D. Plant Center." (A187).

Yet despite knowing Ms. Pruden was in custody on the date of the homicide, the State, without any basis in the evidence, implied that Ms. Pruden was permitted to leave the facility on work

release. (A214, 235, 240-241). When pressed by the Court as to whether the State believed that Ms. Pruden was at liberty somehow on April 14, 2015, DAG Puit responded, "I do not know." (A240). The Court emphasized that as the one in charge of the Department of Corrections, the State was responsible for being able to advise the Court whether Ms. Pruden was in custody or at liberty. (A240-241). The Court further stated, "I think it was incumbent on the State, having called her as a witness, found out the fact it did, to have shown one way or the other that she was in the custodial situation at Hazel D. Plant or not." (A241).

In light of the aforementioned, it is indisputable that the State should have known pre-trial that Ms. Pruden would be providing perjured testimony and most certainly should have known, and did know, that Ms. Pruden had in fact provided false testimony once the issue was raised by defense counsel and the State was unable to find any evidence that Ms. Pruden was at liberty on work release on April 14, 2015.

C. The false testimony of Ms. Pruden was not corrected.

The trial transcripts clearly show that Ms. Pruden's false testimony was never corrected and in fact was actually advanced by the State. Trial counsel attempted to show on cross-examination that Ms. Pruden was in custody on April 14, 2015. (A183-184, 189-212, 215). However, Ms. Pruden remained adamant that she was at the scene of the shooting and not at Hazel Plant. (*Id.*). On re-direct examination, DAG Zubrow subtly implied that Ms. Pruden was not at Hazel Plant, and therefore testifying truthfully, by reading a description of Hazel Plant which noted that the facility has "work release as a component." (A214).

Most significantly, during closing arguments, DAG Puit stated: "He's going to talk to you about Monique. Monique was emphatic that she was out there. You heard Mr. Armstrong question

her about her time at Hazel D. Plant Center. You are going to be instructed that you will be the sole judges of credibility in this case. . . .” (A235). By reminding the jury that Ms. Pruden was “emphatic” that she witnessed the shooting and by telling the jury that they get to decide Ms. Pruden’s credibility, DAG Puit essentially argued that Ms. Pruden’s testimony was truthful.

Even more egregiously, during rebuttal, DAG Puit insinuated that Hazel Plant was not a jail. (A240). Trial counsel requested that the record be corrected, noting “She has said that she was not in jail; she was at Hazel D. Plant, which leads the jury to believe she is not in jail. That needs to be corrected, Your Honor.” (A241). Thereafter, the Court instructed the jury, “Members of the jury, I instruct you that Hazel D. Plant facility is a jail.” (A241). Thus, the only false information that was corrected was DAG Puit’s statement that Hazel D. Plant was not a jail. (A241). Ms. Pruden’s false testimony was left uncorrected entirely, as was the State’s insinuations that Ms. Pruden was at liberty on work release on April 14, 2015.

D. There is a reasonable likelihood that the perjured testimony could have affected the judgment of the jury.

The United States Supreme Court has held that “a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.”¹⁴ The Supreme Court has further held that “the same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.”¹⁵ The Supreme Court has additionally held

¹⁴ *Agurs*, 427 U.S. at 103 (1976), holding modified by *Bagley*, 473 U.S. 667.

¹⁵ *Giglio*, 405 U.S. at 153 (quoting *Napue*, 360 U.S. at 269); *see also Lambert*, 387 F.3d at 242.

that even if the false testimony goes only to a witness's credibility and not to the defendant's guilt, the conviction must still be set aside.¹⁶

In this case, not only did the false testimony, which the State failed to correct and continued to knowingly present and argue even after being made aware of its falseness, go to Ms. Pruden's credibility, but it also went to the heart of the issue-Mr. Thomas' guilt or innocence. Ms. Pruden expressly testified that she was familiar with both Mr. Reid and Mr. Thomas and that she actually saw Mr. Thomas shoot and kill Mr. Reid. Ms. Pruden painted a compelling story of these two individuals having an argument over drugs and how it escalated with Mr. Reid spitting on Mr. Thomas. (A169-173). Ms. Pruden's testimony corroborated the testimony of Ms. Reid, with both explaining how the two men had an argument, with Mr. Thomas leaving and returning approximately five minutes later, followed by the resumption of the argument and eventually, the shooting.

When presented with evidence of her lies by trial counsel, Ms. Pruden became increasingly hostile and argumentative, repeatedly refusing to acknowledge that she was in custody on April 14, 2015. (A183-184, 189-212, 215). The State then used Ms. Pruden's combative attitude during closing and rebuttal arguments to imply that Ms. Pruden must have been truthful in her testimony because she was so "emphatic" that she was there and saw what she said that she saw. (A235, 240). Any progress trial counsel made in convincing the jury that Ms. Pruden's testimony was false, as it most certainly was, was undermined by the actions of the State. The State insinuated that Ms. Pruden was at liberty on work release on April 14, 2015 when DAG Zubrow read a description of Hazel Plant on re-direct examination that noted the facility has a work release component. (A214). DAG Puit further undermined trial counsel's attempts to correct Ms. Pruden's false testimony by arguing

¹⁶ *Napue*, 360 U.S. at 270.

to the jury on rebuttal: "Mr. Armstrong says to you that it is without a doubt that Monique Pruden was in jail. I think he writes jail up there five or six times. She's emphatic. She sits up there. She's there. The State submits to you, the records says she's at Hazel D. Plant, not jail, Hazel D. Plant." (A240). Although the Court corrected the record that Hazel D. Plant is in fact a jail, the Court's correction did nothing to ameliorate the damage caused by the State's insinuations that there is, in fact, doubt as to whether Ms. Pruden was in custody on April 14, 2015.

Moreover, DAG Puit further undermined trial counsel's cross-examination of Ms. Pruden and implied the truthfulness of Ms. Pruden's testimony by arguing to the jury "Monique was emphatic that she was out there. You heard Mr. Armstrong question her about her time at Hazel D. Plant Center. You are going to be instructed that you will be the sole judges of credibility in this case. . . .". (A235). By her statements, DAG Puit suggested that despite the evidence trial counsel presented on cross-examination, he must be wrong because Ms. Pruden was so emphatic in her testimony that she witnessed the shooting. DAG Puit furthered this improper insinuation by reminding the jury that they are the sole judges of credibility in the case, essentially telling the jury there was potential for Ms. Pruden's testimony to be truthful and that they should so find.

By the prosecutors' actions, the State not only undermined trial counsel's attempts to correct the false testimony, but also undermined trial counsel's credibility with the jury. Trial counsel showed a strong cross-examination of Ms. Pruden, by pointing out that her statements were in direct contradiction with the documents in his possession. However, when the State followed that powerful cross-examination by insinuating that trial counsel was incorrect and that Ms. Pruden's testimony truthful, the State tarnished trial counsel's credibility, making it appear that trial counsel was attempting to pull the wool over the eyes of the jurors. This undermined not only his cross-

examination of Ms. Pruden, but his cross-examination of all the State's witnesses, and given the specific facts of this case, that undoubtedly had an affect on the judgment of the jury.

There was minimal to no physical evidence connecting Mr. Thomas to the shooting in this case. The strongest physical evidence that the State presented was the surveillance video and sign-in sheets at Crestview Apartments that arguably showed Mr. Thomas in the vicinity of the scene of the shooting around the time the shooting occurred. (A131-134). The Pete's Pizza surveillance videos showed an individual not clearly identifiable as Mr. Thomas in the general vicinity of the shooting around the time it occurred. (A129, 137). The store's surveillance videos did not, however, show anyone running through the parking lot, as the witnesses testified. (A135).

The majority of the State's evidence against Mr. Thomas consisted of witness testimony-three eye witnesses, including Ms. Pruden, and a prison informant. Ms. Reid testified that she witnessed the shooting; however, there were inconsistencies between the testimony of Ms. Reid and Ms. Cassidy, who also testified that she witnessed the shooting. (A89-93, 106-107, 114, 118, 123-124). Yet Ms. Cassidy did not come forward to report what she allegedly saw until two years after the shooting. (A110). Mr. Lacurts testified that Mr. Thomas admitted to him that he shot Mr. Reid. (A148-149). Yet, Mr. Lacurts, who has a history of making deals with the State to help himself out in other cases, acknowledged that he had the ability to access discovery sent to Mr. Thomas by his attorneys and that many people were discussing the shooting. (A144-145, 149-153, 156-157, 161).

In light of the aforementioned, the evidence against Mr. Thomas was far from overwhelming, and ultimately boiled down to the credibility of the witnesses and whether the jury believed their testimony. For that reason, the State's actions in allowing Ms. Pruden to present false testimony and continuing to argue that false testimony to the jury was especially damaging to the defense, not just

because Ms. Pruden's testimony corroborated Ms. Reid's testimony and constituted a third eye witness alleging they saw Mr. Thomas shoot Mr. Reid, but because the State's actions also had the effect of undermining trial counsel's credibility. It was clear from trial counsel's cross-examination of Ms. Pruden that trial counsel had no doubt that Ms. Pruden was in custody at the time of the shooting, and when the State insinuated that trial counsel was wrong, on re-direct examination and during closing and rebuttal arguments, the State diminished the impact of not only trial counsel's cross-examination of Ms. Pruden but also of Ms. Reid, Ms. Cassidy and Mr. Lacurts.

In light of the aforementioned, it is clear that there is a reasonable likelihood that Ms. Pruden's false testimony, and the fact that it was left uncorrected and actually argued by the State, could have affected the judgment of the jury.¹⁷ As such, Mr. Thomas' Fourteenth Amendment right to due process was plainly violated, as his convictions were tainted by perjured testimony.¹⁸ Thus, Mr. Thomas' convictions must be set aside¹⁹ and a new trial ordered.

E. This claim is not procedurally defaulted under Rule 61(i)(3).

This claim is not barred under Delaware Superior Court Rule of Criminal Procedure 61(i)(3). Rule 61(i)(3) states that "any ground for relief that was not asserted in the proceedings leading to the judgment of conviction . . . is thereafter barred, unless the movant shows (A) cause for relief from

¹⁷ *Haskell*, 866 F.3d at 145 (holding that when the State has knowingly presented or failed to corrected perjured testimony, "a petitioner carries his burden when he makes the reasonable likelihood showing required by *Giglio* and *Napue*" as opposed to the "actual prejudice" showing required by *Brecht*) (citing *Giglio*, 405 U.S. at 154 (1972) (citing *Napue*, 360 U.S. at 271); *Brecht*, 507 U.S. at 637-38); *Jenkins*, 305 A.2d at 616 (noting that *Napue* applies to the knowing use of false or perjured testimony).

¹⁸ *Id.* at 145-146 (citing *Napue*, 360 U.S. at 269; *Giglio*, 405 U.S. at 153; *Lambert*, 387 F.3d at 242).

¹⁹ *Agurs*, 427 U.S. at 103, holding modified by *Bagley*, 473 U.S. 667; *Napue*, 360 U.S. at 270.

the procedural default and (B) prejudice from violation of the movant's rights."²⁰ While trial counsel did not raise Mr. Thomas' claim of due process violation on direct appeal, the procedural bar of Rule 61(i)(3) is inapplicable, because Mr. Thomas is able to demonstrate both cause for relief and prejudice from violation of his rights.²¹

In order to show "cause for relief from the procedural default", Mr. Thomas must show that "some external impediment" prevented him from raising the claim."²² To show "prejudice from violation of the movant's rights", Mr. Thomas must show that there is a "substantial likelihood" that if the issue had been raised on appeal, the outcome would have been different.²³

Trial counsel was unable to raise Mr. Thomas' claim that his right to due process of law was violated when his conviction was tainted by the use of perjured testimony, as trial counsel could not have obtained the documentation needed to conclusively show that Ms. Pruden was in custody at Hazel Plant on April 14, 2015 and did not have the ability to leave the facility on work release at that time.²⁴ Although trial counsel possessed inmate locator sheets and Ms. Pruden's docket sheet,

²⁰ Del. Super. Ct. Crim. R. 61(i)(3).

²¹ See generally *Blackwell v. State*, 736 A.2d 971 (Del. 1999).

²² *Younger v. State*, 580 A.2d 552 (Del. 1990) (citing *Murray v. Carrier*, 477 U.S. 478, 492 (1986)); see also *State v. Perez*, Del. Super., ID No. 1807009079, Karsnitz, J., at 6 (Nov. 2, 2020) (Mem. Op. and Or.) (Fastcase) (attached as Exhibit B).

²³ *Flamer v. State*, 585 A.2d 736, 748 (Del. 1990) (quoting *United States v. Freddy*, 456 U.S. 152, 172-174 (1982)); see also *Perez*, ID No. 1807009079, at 6.

²⁴ Counsel, and a member of Counsel's staff, Daniel C. Breslin, Esquire, spoke with Ray Armstrong, former trial counsel, via telephone on January 11, 2021. During this phone call, Mr. Armstrong advised that he attempted to make phone calls to the DOC during the recess when Judge Cooch instructed the parties to get an answer as to Ms. Pruden's incarceration status. Mr. Armstrong stated that he told the DOC that he was in trial, and he was trying to find out whether a Ms. Pruden was in the facility at the time that she allegedly witnessed the crime. DOC informed Mr. Armstrong that they had already received a phone call from the State in relation to Ms. Pruden, that the DOC would be corresponding with the State, and that Mr. Armstrong would need to go through the State to get the answer. Mr. Armstrong further stated that the DOC would not tell him anything.

sentence order and violation paperwork, all of which raised strong suspicion that Ms. Pruden was in custody at Hazel Plant on April 14, 2015, the State suggested that Ms. Pruden had the ability to leave the facility for work release, and trial counsel did not have in his possession any documentation that would have conclusively refuted that.

Although the DOC advised trial counsel that he would have to go through the State to get information on Ms. Pruden's custodial status on April 14, 2015, there is no indication in trial counsel's file that the State ever provided him with such documentation. Moreover, as DAG Puit advised the trial court that she did not know if Ms. Pruden was permitted to leave the facility, it does not appear that the State ever sought out this information any further during trial or post-trial and/or provided it to the defense. As the Delaware Supreme Court does not allow for expansion of the record on direct appeal,²⁵ this claim could only be pursued through a postconviction motion, which does allow for expansion of the record.²⁶

For the reasons articulated above,²⁷ there is a reasonable likelihood that Ms. Pruden's false testimony, and the fact that it was left uncorrected and actually argued by the State, could have affected the judgment of the jury. Accordingly, Mr. Thomas has established a violation of his United States constitutional Fourteenth Amendment right to due process, as his convictions were tainted by perjured testimony. This same showing would have been made on direct appeal, had trial counsel

²⁵ Del. Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."); Del. Supr. Ct. R. 9(a) ("Record — Contents. —An appeal shall be heard on the original papers and exhibits which shall constitute the record on appeal.").

²⁶ Del. Super. Ct. R. Crim. Pro 61(h)(1) ("After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable.").

²⁷ See *supra* pp. 28-32.

been able to raise the issue. Thus, there is a “substantial likelihood” that if the issue had been raised on appeal, the outcome of the appeal would have been different. Accordingly, Mr. Thomas has demonstrated both cause for relief and prejudice sufficient to overcome the procedural bar of Rule 61(i)(3).

F. An evidentiary hearing is needed to expand the record in light of the constitutional claims raised herein.

While Mr. Thomas believes the information provided in this Motion and accompanying Appendix and Exhibits provides sufficient support for this Court to grant relief, in the event this Court finds otherwise or that additional facts are needed for the Court to make required fact findings or to determine the extent of relief to which Mr. Thomas is entitled, Mr. Thomas requests that an evidentiary hearing be held pursuant to Delaware Superior Court Criminal Rule 61(h).²⁸ An evidentiary hearing is needed when raised claims require a forum for a defendant to compel testimony, so as to provide the defendant with a meaningful opportunity to present witnesses and evidence.²⁹ As there is no right to discovery in a Rule 61 postconviction review setting, an evidentiary hearing is the only way for Mr. Thomas to fully present his alleged constitutional violations to this Court.³⁰

Within Claim I, Mr. Thomas has alleged a constitutional due process violation in that his convictions were tainted by the use of perjured testimony. Relatedly, Mr. Thomas alleges within Claim II³¹ that his constitutional right to due process was violated by prosecutorial misconduct, and within Claim III, alleges that his constitutional due process rights were violated by the State’s

²⁸ See Del. Super. Ct. Crim. R. 61(h); *Dawson v. State*, 673 A.2d 1186, 1197 (Del. 1996).

²⁹ See *Dawson*, 673 A.2d at 1197; *Townsend v. Sain*, 372 U.S. 293, 313 (1963); *Lee v. Glunt*, 667 F.3d 397, 406 (3d Cir. 2012); *Marshall v. Hendricks*, 307 F.3d 36, 116 (3d Cir. 2001).

³⁰ *Dawson*, 673 A.2d at 1197.

³¹ See *infra* pp. 38-47.

violation of its *Brady* obligations.³² All three claims are based upon the same factual circumstances, namely Ms. Pruden's false testimony and the State's failure to correct it and attempts to defend the perjured testimony during trial. All three claims raise allegations of serious constitutional violations in a case in which the defendant received a life sentence. As such, further development of the factual record is needed to allow Mr. Thomas the ability to provide support for his constitutional claims, so as to comply with Mr. Thomas' due process rights under the Fourteenth Amendment to the United States Constitution and Article I, § 7 of the Delaware Constitution.³³

Mr. Thomas expects that at an evidentiary hearing, testimony should be compelled from Monique Pruden, DAG Annemarie Puit, DAG Eric Zubrow, Mr. Ray Armstrong, Mr. Emery Abdel-Latif, any relevant employees of the Department of Corrections, and any relevant employees from Deal\$. As Counsel was unable to obtain employment records for Ms. Pruden for April 2015 from Deal\$ without a subpoena, an administrative employee from Deal\$ could provide testimony as to Ms. Pruden's employment status with the company during April 2015.³⁴ Employee(s) from the Department of Corrections could assist the parties and Court in understanding the DOC documents that show Ms. Pruden was in DOC custody at Hazel Plant on April 14, 2015 without the ability to leave on work release, as well address whether there are additional records that could be produced by the DOC, such as log books, that would demonstrate Ms. Pruden never left the facility on April 14, 2015.

³² See *infra* pp. 48-55.

³³ See *Dawson*, 673 A.2d at 1197; *Townsend*, 372 U.S. at 313; *Lee*, 667 F.3d at 406; *Marshall*, 307 F.3d at 116 (3d Cir. 2001).

³⁴ As noted above, Counsel will file a Motion for Issuance of a Subpoena *Duces Tecum* at a later date regarding this issue.

Testimony from DAG Puit and DAG Zubrow can shed light on what steps the State took prior to trial to confirm Ms. Pruden's criminal history and custodial status on April 14, 2015, as well as what steps were taken mid-trial and post-trial, if any, to resolve the raised issues. Mr. Armstrong and Mr. Abdel-Latif can testify as to what steps they took to ascertain Ms. Pruden's whereabouts on April 14, 2015, what roadblocks, if any, they encountered in their attempts to do so, and what assistance, if any, the State provided in resolving the issue mid- and post-trial. Lastly, testimony from Ms. Pruden can help shed light on any issues that were not discussed fully during her interview with Investigator Wiant, as he was unable to make contact with her for a follow-up interview. Such issues could include specifics about her conversation with Officer McKenzie, what all was said during her June 16, 2015 statement to Detective Curley prior to the recording equipment being turned on, what prompted her to provide untruthful statements to Detective Curley and testify falsely, whether she received any benefit from the State or law enforcement in exchange for her statements and/or testimony against Mr. Thomas, what contact she had pre-, mid-, and post-trial, if any, with the Attorney General's Office, and any other topics the parties and Court deem relevant.

In light of the serious constitutional claims raised within this Motion, Mr. Thomas respectfully requests that an evidentiary hearing be held, so that he has a meaningful opportunity to present witnesses and evidence that will enable him to fully present his claims of violations of his federal and state constitutional rights to this Court for proper adjudication.

CLAIM II. THE STATE COMMITTED PROSECUTORIAL MISCONDUCT BY INJECTING PERJURED TESTIMONY INTO THE TRIAL, BY FAILING TO CORRECT THE FALSE TESTIMONY AND BY ARGUING THE FALSE TESTIMONY TO THE JURY DURING CLOSING AND REBUTTAL ARGUMENTS, WHICH DEPRIVED MR. THOMAS OF HIS RIGHT TO DUE PROCESS PURSUANT TO THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, § 7 OF THE DELAWARE CONSTITUTION.

The State committed four key errors with respect to calling Monique Pruden as a witness in its case-in-chief that cumulatively amounted to prosecutorial misconduct: 1) the State failed to adequately perform a criminal record check of Monique Pruden prior to trial; 2) once presented with records by trial counsel showing that Ms. Pruden was likely in DOC custody at the time of the offense and therefore committing perjury, the State failed to obtain records, or call DOC witnesses, to conclusively determine Ms. Pruden's custody status at the time of the homicide and therefore conclusively determine whether she was providing false testimony; 3) once made aware of Ms. Pruden's nearly certain false testimony, the State failed to correct it; and 4) beyond failing to correct the false testimony, the State actually argued that the false testimony was legitimate to the jury during closing and rebuttal arguments and implied to the jury, without any basis in the evidence and without a good faith basis for doing so, that Ms. Pruden's testimony was not in fact false. Cumulatively, these errors constituted prosecutorial misconduct which deprived Mr. Thomas of his right to due process pursuant to the Fourteenth Amendment to the United States Constitution and Article 1, 7 of the Delaware Constitution.³⁵

³⁵ U.S. Const. amend. XIV; Del. Const. art. I, § 7; The Delaware Supreme Court has held that the phrase "due process of law" as found in the Fourteenth Amendment and the phrase "law of the land" as found in Article I, § 7 of the Delaware Constitution are synonymous and both incorporate the concept of fundamental fairness. (*Moore* 62 A.3d at 1208; *Gann*, 2011 WL 4985701, at *2 ("[F]undamental requirements of fairness which are the essence of due process govern all judicial proceedings."); *Hammond*, 569 A.2d at 87 (recognizing "fundamental fairness, as an element of due process" under Article I, § 7 of the Delaware Constitution)).

A. Applicable legal standard.

In claims of prosecutorial misconduct, the three-factor test set forth in *Hughes v. State* guides the analysis. Under the *Hughes* test, once the Court determines that misconduct actually occurred, the Court next considers “the closeness of the case”, “the centrality of the issue affected by the alleged error” and “the steps taken to mitigate the effects of the error.”³⁶ The purpose of the *Hughes* test is to determine whether the misconduct “‘prejudicially affect[ed] the defendant’s substantial rights” thereby “warrant[ing] a reversal of his conviction.”³⁷ The *Hughes* test is “fact sensitive”.³⁸ In conjunction with the three *Hughes* factors, a fourth factor was established in *Hunter v. State*, which asks “whether the misconduct amounts to repetitive errors that cast doubt on the integrity of the judicial process.”³⁹

For the reasons explained below, the State’s actions with respect to the false testimony of Ms. Pruden constituted misconduct that warrants a reversal of Mr. Thomas’ convictions and a new trial.

B. The State committed misconduct.

The State’s failure to adequately check the criminal records for Ms. Pruden was grossly negligent. The State was aware that Ms. Pruden was convicted of Aggravated Menacing, as DAG Zubrow questioned Ms. Pruden on her conviction during direct examination. (A174). As explained above,⁴⁰ the docket sheet alone for Ms. Pruden’s Aggravated Menacing case leads one to believe that Ms. Pruden was in custody. (A246). It is unclear what reason the State would have for not

³⁶ *Hunter v. State*, 815 A.2d 730, 737 (Del. 2002) (citing *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981) (quoting *Dyson v. United States*, 418 A.2d 127, 132 (D.C. 1980))); *Baker v. State*, 906 A.2d 139, 148 (Del. 2006).

³⁷ *Baker*, 906 A.2d at 149.

³⁸ *Baker*, 906 A.2d at 149.

³⁹ *Hunter*, 815 A.2d at 737.

⁴⁰ *See supra* pp. 26.

confirming Ms. Pruden's custody status for April 14, 2015 given the docket sheet, sentence order and violation paperwork, but whatever the cause, it cannot possibly be reasonable under any objective standard.

However, even if the State did not bear responsibility for determining Ms. Pruden's custody status prior to trial, the State most certainly bore responsibility for determining her custody status once the prosecutors were alerted to the issue. As the Court inquired, "Is the State suggesting, because it should know, that she was out on work release or was at liberty or not in a custodial section?" (A240). When DAG Puit conceded that the State did not know, the Court stated, "The State is the one on this important issue that should be able to tell the Court whether or not she was in prison." (A240-241).

While the State's failure to determine Ms. Pruden's custody status prior to trial and mid-trial once the issue was raised is significant in and of itself, the State egregiously crossed the line when it suggested to the jury, with no good faith basis for doing so, that Ms. Pruden was at liberty on work release on April 14, 2015.⁴¹ The Court concurred, stating:

THE COURT: Is the State suggesting, because it should know, that she was out on work release or was at liberty or not in a custodial section?

MS. PUIT: I think the answer is no one knows. I think we can argue they put into evidence it's a work release facility.

THE COURT: I know defense put that into evidence, but does the State believe that she was at liberty in some fashion on April 14, 2015?

⁴¹ The State's rebuttal should be limited to responding to the arguments made by opposing counsel, as it is improper to "sandbag" an opponent by reserving arguments for rebuttal or by merely perfunctorily addressing a significant point of the case during opening argument, only to then raise the matter during rebuttal. (*See, e.g., Forrest v. State*, 721 A.2d 1271, 1281 (Del. 1999); *DeShields v. State*, 534 A.2d 630, 645 (Del. 1987); *Bailey v. State*, 440 A.2d 997, 1002 (Del. 1982)).

MS. PUIT: I do not know.

THE COURT: Well, I think it's the State's - - the State is in control of the Department of Corrections. I don't think the State should be permitted to suggest, just because this document was put into evidence, it was partially a work release facility, which probably is --

MS. PUIT: Your Honor, sorry to interrupt.

THE COURT: Go ahead.

MS. PUIT: On cross-examination said she has a job at Deals on Miller Road in April of 2015.

THE COURT: What has the State found out from the Department of Correction as to where she was on April 14?

MS. PUIT: I do not have an answer. All I know is that she was at Hazel D. Plant, and I don't have a definitive answer. That's what we were trying to get, and I can't get it.

MR. ARMSTRONG: That is a Level V facility, Your Honor. The State is now saying that it's not. It's a prison.

THE COURT: I think just because that document was put into evidence that suggests that it can be a work release referral, it is incumbent on the State, maybe just because personnel at the Department of Correction weren't there in the last couple of days, when this 24 hours almost when this came to light, I don't think the State should be able to suggest that she might have been able to leave without affirmative proof, given the seriousness of this that the defendant - - I think it's stated another way, I think the State is bound by the weight of the facts developing this case, that she was in prison on April 14, and I'm just going to preclude the State from arguing to the contrary.

The State is the one on this important issue that should be able to tell the Court whether or not she was in prison. If you say you can't tell that one way or the other, I'm not going to allow an argument to the contrary. (A240-241).

Later, when DAG Puit objected to the Court correcting the record on whether Hazel D. Plant is a jail, the Court noted:

Well, then I think the State should have put on some evidence that she was in the work release program or had the ability to leave, other than this document. I have to

find the question because the State never argued until right now in rebuttal, there was a theoretical opportunity of her to not have been at Hazel D. Plant.

I'm going to instruct the jury that Hazel D. Plant is a secure facility because I think it was incumbent on the State, having called her as a witness, found out the fact it did, to have shown one way or the other that she was in the custodial situation at Hazel D. Plant or not.

So I'm going to instruct the jury that for the background facts, Hazel D. Plant is a, in fact, a jail. (A241).

The record is clear that not only did the State fail to correct the false testimony of one of its witnesses, but the State actually suggested to the jury that the testimony was not false, despite having absolutely no basis in the evidence for such a suggestion. As such, it is clear that the State's actions constituted misconduct.

C. Under the *Hughes/Hunter* standard, the State's misconduct prejudicially affected Mr. Thomas' substantial rights and casts doubt on the integrity of the judicial process.

Under the *Hughes/Hunter* test, the State's misconduct prejudicially affected Mr. Thomas' due process right to a fair trial and casts doubt on the integrity of the judicial process. The first *Hughes* factor, the closeness of the case, should be resolved in Mr. Thomas' favor. As explained above,⁴² the State's evidence against Mr. Thomas, while not minuscule, was far from overwhelming. The State had minimal to no physical evidence connecting Mr. Thomas to the shooting. The Pete's Pizza surveillance videos showed an individual in the area of the shooting around the relevant time, but the identity of this individual was not easily discernible. (A129, 135, 137). The majority of the State's evidence consisted of three eye witnesses and one prison informant who alleged Mr. Thomas confessed to the shooting. The prison informant had a history of making deals with the State and acknowledged that he could have, although he testified that he had not, discovered the information

⁴² See *supra* pp. 31.

he provided from means other than Mr. Thomas. (A144-145, 149-153, 156-157, 161). Ms. Cassidy allegedly witnessed the shooting, but failed to report what she saw to law enforcement for two years. (A110). Moreover, the testimonies of Ms. Reid and Ms. Cassidy were inconsistent on the details, and the State's third eye witness, Ms. Pruden, clearly provided perjured testimony. (A A89-93, 106-107, 114, 118, 123-124). As such, the State's ability to secure a conviction predominantly boiled down to the jury's credibility determinations of the alleged eye witnesses. In light of strength of the State's evidence against Mr. Thomas, this case was relatively close.

The second *Hughes* factor, the centrality of the issue affected by the alleged error, should also be resolved in Mr. Thomas' favor. As has been explained throughout this Motion, Ms. Pruden's false testimony went not only to her credibility as an eye witness but also went to the heart of the trial-Mr. Thomas' guilt or innocence. Ms. Pruden, in providing perjured testimony, expressly stated that she, being familiar with both individuals, witnessed Mr. Thomas shoot Mr. Reid. Moreover, Ms. Pruden's false testimony supported the sequence of events established in Ms. Reid's testimony, thereby strengthening the State's case. Most significantly, the State's misconduct, in failing to correct the false testimony and actually advocating it to the jury, undermined the effectiveness of trial counsel's cross-examination of Ms. Pruden while also undermining the effectiveness of his cross-examination of all the State's witnesses and diminishing his credibility with the jury. By suggesting that Ms. Pruden was out on work release on April 14, 2015 and insinuating that trial counsel was wrong, the State implied that trial counsel gave the jury false information and either through intent or mistake, was attempting to fool the jury into discrediting a truthful State witness. As such, the alleged errors affected the entirety of the trial and Mr. Thomas' ability to defend against the State's evidence, and in particular, against the State's false evidence in the form of perjured testimony.

The last *Hughes* factor, the steps taken to mitigate the effects of the error, must also be resolved in Mr. Thomas' favor. As explained above,⁴³ Ms. Pruden's false testimony was left uncorrected and the State's improper insinuations to the jury that Ms. Pruden was not in custody and at liberty on work release at the time of the shooting and that Hazel D. Plant is not a jail were only corrected to the extent of the Court instructing the jury that Hazel D. Plant is, in fact, a jail. (A241). Moreover, as Mr. Thomas has explained, the effects of the State's misconduct permeated the entirety of the trial, diminishing trial counsel's credibility and undermining his cross-examination of the State's witnesses. No corrective actions were taken, nor could there be any corrective actions capable of mitigating the prejudicial effects of the State's misconduct.

Lastly, in addition to the three *Hughes* factors, the fourth *Hunter* factor, "whether the misconduct amounts to repetitive errors that cast doubt on the integrity of the judicial process", must likewise be found in Mr. Thomas' favor. The State's improper actions occurred repeatedly throughout the case, beginning with DAG Zubrow's re-direct examination of Ms. Pruden, which insinuated that Ms. Pruden was out of custody on work release on April 14, 2015, and continuing through the State's closing and rebuttal arguments in which DAG Puit argued to the jury that Ms. Pruden was not at jail, that trial counsel is wrong that "it is without a doubt that Monique Pruden was in jail", that it was up to the jury to judge Ms. Pruden's credibility and emphasized that Ms. Pruden was emphatic that she was at the scene of the shooting and not in jail. (A214, 235, 240).

In light of the aforementioned, it is apparent that the State's errors with regard to not correcting Ms. Pruden's false testimony and actually arguing the perjured testimony to the jury, without any good faith basis for doing so, were repetitive and prejudiced Mr. Thomas' ability to

⁴³ See *supra* pp. 27-28.

defend against the State's evidence. Accordingly, Mr. Thomas was denied his United States and Delaware constitutional right to due process of law when the above described prosecutorial misconduct prevented him from receiving a fair trial.⁴⁴

D. This claim is not procedurally defaulted under Rule 61(i)(3).

Although trial counsel did not raise this claim of prosecutorial misconduct on direct appeal, this claim is not barred under Delaware Superior Court Rule of Criminal Procedure 61(i)(3), because Mr. Thomas is able to demonstrate both cause for relief and prejudice from violation of his rights.⁴⁵

As explained in relation to Claim I,⁴⁶ in order to show "cause for relief from the procedural default", Mr. Thomas must show that "'some external impediment' prevented him from raising the claim",⁴⁷ and to show "prejudice from violation of the movant's rights", Mr. Thomas must show that there is a "substantial likelihood" that if the issue had been raised on appeal, the outcome would have been different.⁴⁸

⁴⁴ See, e.g. *Haskell*, 866 F.3d at 145-46 ("A state violates the Fourteenth Amendment's due process guarantee when it knowingly presents or fails to correct false testimony in a criminal proceeding.") (citing *Napue*, 360 U.S. at 269); *Biberfeld*, 957 F.2d 98 ("If a prosecutor uses testimony it knows or should know is perjury, it is fundamentally unfair to an accused.") (citing *Agurs*, 427 U.S. at 103); *Hoffecker*, 530 F.3d at 183 (3d Cir. 2008) (noting that to establish a due process violation based on perjury of a government witness, the defendant must show: 1) the witness committed perjury; 2) the Government knew or should have known of the perjury; 3) the testimony went uncorrected; and 4) there is a reasonable likelihood that the testimony could have affected the verdict); *Lambert*, 387 F.3d at 242; c.f. *United States v. John-Baptiste*, 747 F.3d 186, 211 (3d Cir. 2014) (holding that although the government should have investigated the identity of its witness prior to trial, the witness's perjured testimony could not have affected the entire trial, as it only related to four counts that were ultimately dismissed at the close of the government's case).

⁴⁵ See generally *Blackwell*, 736 A.2d 971.

⁴⁶ See *supra* pp. 32-35.

⁴⁷ *Younger*, 580 A.2d 552 (citing *Murray*, 477 U.S. at 492; see also *Perez*, ID No. 1807009079, at 6.

⁴⁸ *Flamer*, 585 A.2d at 748 (quoting *Freddy*, 456 U.S. at 172-174); see also *Perez*, ID No. 1807009079, at 6.

For the same reasons as applicable to Claim I, trial counsel was unable to raise on direct appeal Mr. Thomas' claim that the State committed prosecutorial misconduct by injecting perjured testimony into the trial, by failing to correct the false testimony and by arguing the false testimony to the jury during closing and rebuttal arguments, because trial counsel could not have obtained the documentation needed to conclusively show that Ms. Pruden was in custody at Hazel Plant on April 14, 2015 and did not have the ability to leave the facility on work release at that time. As noted below,⁴⁹ trial counsel was dependent upon the State to obtain and provide to the defense the documentation conclusively establishing Ms. Pruden's custody status on April 14, 2015, and there is no indication that the State ever did. As such, this claim could only be pursued through a postconviction motion, which does allow for expansion of the record.⁵⁰

Furthermore, just as with Claim I, for the reasons explained above,⁵¹ it is apparent that the State's misconduct prevented Mr. Thomas from receiving a fair trial and therefore violated Mr. Thomas' federal and state constitutional rights to due process of law. This same showing would have been made on direct appeal, had trial counsel been able to raise the issue. Thus, there is a "substantial likelihood" that if the issue had been raised on appeal, the outcome of the appeal would

⁴⁹ See *infra* pp. 50-51, 51 n.65; see *supra* pp. 33 n.24.

⁵⁰ Del. Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."); Del. Supr. Ct. R. 9(a) ("Record — Contents. — An appeal shall be heard on the original papers and exhibits which shall constitute the record on appeal."); Del. Super. Ct. R. Crim. Pro 61(h)(1) ("After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable.").

⁵¹ See *supra* pp. 34-35.

have been different. Accordingly, Mr. Thomas has demonstrated both cause for relief and prejudice sufficient to overcome the procedural bar of Rule 61(i)(3).

CLAIM III. THE STATE VIOLATED ITS OBLIGATIONS UNDER *BRADY V. MARYLAND* BY FAILING TO SEARCH FOR AND DISCLOSE CRUCIAL IMPEACHMENT INFORMATION DEMONSTRATING THE FALSITY OF MS. PRUDEN'S TESTIMONY, IN VIOLATION OF MR. THOMAS' RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND UNDER ARTICLE 1, § 7 OF THE DELAWARE CONSTITUTION.

A. Law applicable to a *Brady* violation.

The United States Supreme Court held in *Brady v. Maryland* that “suppression by the prosecution of evidence favorable to an accused violates due process when the evidence is material to either guilt or punishment, irrespective of good faith or bad faith of the prosecutor.”⁵² *Brady* requires that the prosecutor disclose all materially exculpatory and impeachment evidence.⁵³ The prosecution, under *Brady*, has an affirmative duty to disclose any evidence that would reach the “reasonable probability” standard, meaning that failure to disclose would undermine confidence in the outcome of a trial.⁵⁴ Recognizing that it is sometimes difficult to assess the materiality of evidence prior to trial, prosecutors must generally take a broad view of materiality and err on the side of disclosing exculpatory and impeaching evidence.⁵⁵ The timing of disclosure must be made in order for defense counsel to be able to use the material effectively.⁵⁶

As an extension of the duty to provide the defendant with a fair trial, the prosecution is required to disclose any and all favorable evidence known to the “prosecution team.”⁵⁷ Furthermore,

⁵² *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

⁵³ *Id.*; *Bagley*, 473 U.S. at 676; *see Giglio*, 405 U.S. at 154.

⁵⁴ *Kyles v. Whitley*, 514 U.S. 419, 434-35 (1995).

⁵⁵ *Id.* at 439.

⁵⁶ *See White v. State*, 816 A.2d 776, 778 (Del. 2003) (“When a defendant is confronted with delayed disclosure of *Brady* material, reversal will be granted only if the defendant was denied the opportunity to use the material effectively.”) (quoting *Rose v. State*, 542 A.2d 1196, 1199 (Del. 1988)).

⁵⁷ *Kyles*, 514 U.S. at 437-38.

the prosecutor has a duty to seek out and to learn of any favorable evidence known to parties acting on behalf of the government, including the police.⁵⁸ If the police fail to provide the prosecutor with any *Brady* material, the prosecutor has an affirmative duty to follow up with the investigating officers to see if they possess any such materials.⁵⁹

To determine if a *Brady* violation has occurred, the Court performs a three prong analysis.⁶⁰

A *Brady* violation requires showing that: 1) exculpatory or impeaching evidence exists that is favorable to the defendant; 2) that evidence is suppressed by the State; and 3) that the defendant is prejudiced by the suppression. If each of these prongs is met, a *Brady* violation has occurred, and the verdict must be vacated.⁶¹

B. The information was favorable.

Evidence that is favorable to a defendant must be disclosed to him if it is material either to guilt or punishment.⁶² Impeachment evidence is part of an effective cross-examination, which is essential to the defendant's right to confront the witnesses against him.⁶³ There is no doubt that the suppressed evidence, that Ms. Pruden was in custody on April 14, 2015 and did not have the ability to leave Hazel Plant on work release on that date is favorable to Mr. Thomas. This information was not only critical impeachment evidence, in the sense of undermining the credibility of Ms. Pruden, but it also demonstrated that Ms. Pruden was providing perjured testimony, as she could not possibly

⁵⁸ *Youngblood v. West Virginia*, 547 U.S. 867, 870 (2006).

⁵⁹ *Id.*

⁶⁰ *Starling v. State*, 882 A.2d 747, 756 (Del. 2005) (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)).

⁶¹ *Id.*

⁶² *Brady*, 373 U.S. at 87.

⁶³ *Jackson v. State*, 770 A2d 506, 515 (Del. 2001); U.S. Const. amend. XIV; Del. Const. art. I, § 7.

have been at the scene of the shooting and could not possibly have witnessed Mr. Thomas shoot Mr. Reid.

C. The evidence was suppressed by the State.

The State suppressed critical impeachment evidence in Mr. Thomas' case when it failed to timely disclose to the defense that Ms. Pruden was in DOC custody at Hazel Plant on April 14, 2015 without the ability to leave on work release. The United States Supreme Court has long held that a prosecutor must seek out and to learn of any favorable evidence known to parties acting on behalf of the government, including the police.⁶⁴ As the Court noted during trial, the State, "being in control of the Department of Corrections" and being "the one on this important issue that should be able to tell the Court whether or not she was in prison" had the ability and responsibility, as the party calling the witness, "to have shown one way or the other that she was in the custodial situation at Hazel D. Plant or not." (A240-241). However, the State did not do so, either prior to trial or during trial, nor does it appear, based upon the absence of any indication otherwise in trial counsel's file, that the State, post-trial, sought and obtained the necessary information to conclusively determine Ms. Pruden's custody status and provided it to the defense.

Despite being able to obtain inmate locator sheets, Ms. Pruden's docket sheet, sentence order and violation paperwork that appeared to show Ms. Pruden was in custody at Hazel Plant on April 14, 2015, the defense was unable to obtain any documentation from Hazel Plant to conclusively show Ms. Pruden's custody status and ability, or inability, to leave the facility. Although trial counsel tried to obtain such documentation, he was advised by the DOC that he needed to obtain the information

⁶⁴ *Youngblood*, 547 U.S. 867; see also *Smith v. Cain*, 132 S.Ct. 627, 629-30 (2012) (finding a *Brady* violation for the failure to disclose the lead detective's notes, which contained impeachment evidence); *Johnson v. Folino*, 705 F.3d 117, 129 (3d Cir. 2013).

from the State.⁶⁵ As such, it is clear that the defense was prevented from obtaining any information that would conclusively establish Ms. Pruden's custody status on April 14, 2015, and therefore irrefutably demonstrate that her testimony was perjured, and was wholly dependent upon the State to obtain such crucial information.

As noted in Claim I and II, the State should have, and could have, easily sought out the information establishing Ms. Pruden's custody status in April 2015, as the docket sheet alone for Ms. Pruden's Aggravated Menacing case, of which the State was aware, raised significant suspicion that she was in custody on April 14, 2015. (A174, 246-248). And while such information was impossible for the defense to obtain, it would have been easily obtainable for the State, being in control of the Department of Corrections. (A299).

Regardless of whether the State negligently failed to seek out and learn of this crucial *Brady* information, or whether the State was aware of it and failed to provide it to the defense, and the Court when asked, the State's conduct still constituted a violation of its *Brady* obligations.

D. Mr. Thomas was prejudiced as a result of the State's *Brady* violation.

Evidence of Ms. Pruden's false testimony is material, as there is a reasonable likelihood that the false testimony could have affected the judgment of the jury. The United States Supreme Court held in *United States v. Agurs*:

The rule of *Brady v. Maryland* arguably applies in three quite different situations. . . . In the first situation, typified by *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340,

⁶⁵ As noted above, Mr. Armstrong advised Counsel and a member of Counsel's staff during a January 11, 2021 phone call that he had attempted to make phone calls to the DOC during the trial recess and was informed by the DOC that they had already received a phone call from the State in relation to Ms. Pruden, that the DOC would be corresponding with the State, and that Mr. Armstrong would need to go through the State to get the answer. Mr. Armstrong further advised that the DOC would not tell him anything. *See supra* pp. 33 n.24.

79 L.Ed. 791, the undisclosed evidence demonstrates that the prosecution's case includes perjured testimony and that the prosecution knew, or should have known, of the perjury. In a series of subsequent cases, the Court has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. It is this line of cases on which the Court of Appeals placed primary reliance in those cases the Court has applied a strict standard of materiality, not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process.⁶⁶

Subsequently, in *United States v. Bagley*, the Supreme Court held:

It remains to determine the standard of materiality applicable to the nondisclosed evidence at issue in this case. Our starting point is the framework for evaluating the materiality of Brady evidence established in *United States v. Agurs*. The Court in *Agurs* distinguished three situations involving the discovery, after trial, of information favorable to the accused that had been known to the prosecution but unknown to the defense. The first situation was the prosecutor's knowing use of perjured testimony or, equivalently, the prosecutor's knowing failure to disclose that testimony used to convict the defendant was false. The Court noted the well-established rule that "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." (footnote omitted). Although this rule is stated in terms that treat the knowing use of perjured testimony as error subject to harmless-error review, it may as easily be stated as a materiality standard under which the fact that testimony is perjured is considered material unless failure to disclose it would be harmless beyond a reasonable doubt. The Court in *Agurs* justified this standard of materiality on the ground that the knowing use of perjured testimony involves prosecutorial misconduct and, more importantly, involves "a corruption of the truth-seeking function of the trial process." (footnote omitted).⁶⁷

In light of the Supreme Court's consistent holdings establishing that the knowing use of perjured testimony violates *Brady*,⁶⁸ as well as consistent application of a strict test of materiality,⁶⁹

⁶⁶ *Agurs*, 427 U.S. at 103-104 (citing *Mooney v. Holohan*, 294 U.S. 103 (1935)).

⁶⁷ *Bagley*, 473 U.S. at 678-680.

⁶⁸ See also *Lambert*, 387 F.3d at 242; *Haskell*, 866 F.3d at 148-149 ("Like the suppression of evidence, presentation of perjured testimony also violates Brady.") (quoting *Agurs*, 427 U.S. at 103); *Stokes v. State*, 402 A.2d 376, 379 (Del. 1979) ("Noting that the Brady disclosure requirement could apply in three different contexts, the Court attempted to delineate a standard of materiality for each: In the first category, wherein the prosecution knowingly used

the knowing use of perjured testimony, as occurred in this case, is considered material, unless the State's failure to disclose it is harmless beyond a reasonable doubt. As explained in Claims I and II, the State's failure to correct Ms. Pruden's false testimony, and failure to provide the defense with documentation that would correct Ms. Pruden's false testimony, prejudiced Mr. Thomas' ability to defend against the State's evidence. As explained above, the State not only failed to correct the false testimony of Ms. Pruden but actually argued this false testimony to the jury. (A235, 240). In so doing, the State was able to use Ms. Pruden's perjured testimony not only to bolster the testimony of Ms. Reid, but to undermine trial counsel's credibility and his cross-examination of not just Ms. Pruden, but all of the State's other witnesses. Without evidence conclusively establishing Ms. Pruden's custody status on April 14, 2015, which the defense could only obtain through the State, trial counsel was unable to refute the State's suggestions and insinuations to the jury that Ms. Pruden testified truthfully and despite being in Hazel Plant on April 14, 2015, had the ability to leave the facility. In light of this, it is without question that the State's failure to disclose the evidence of Ms. Pruden's false testimony was not harmless beyond a reasonable doubt, and as a result, Mr. Thomas did not receive a fair trial and the verdict is not worthy of confidence. As such, Mr. Thomas' convictions must be set aside and a new trial ordered.

perjured testimony (or should have known that the evidence was perjured), the Court ruled that the evidence would be deemed material 'if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.'").

⁶⁹ *Id.*

E. This claim is not procedurally defaulted under Rule 61(i)(3).

Although trial counsel did not raise this claim of a *Brady* violation on direct appeal, this claim is not barred under Delaware Superior Court Rule of Criminal Procedure 61(i)(3), because Mr. Thomas is able to demonstrate both cause for relief and prejudice from violation of his rights.⁷⁰

As explained in relation to Claims I⁷¹ and II,⁷² in order to show “cause for relief from the procedural default”, Mr. Thomas must show that ““some external impediment” prevented him from raising the claim”,⁷³ and to show “prejudice from violation of the movant’s rights”, Mr. Thomas must show that there is a “substantial likelihood” that if the issue had been raised on appeal, the outcome would have been different.⁷⁴

For the same reasons as applicable to Claims I and II, trial counsel was unable to raise on direct appeal Mr. Thomas’ claim that the State violated its obligations under *Brady v. Maryland* by failing to search for and disclose crucial impeachment information demonstrating the falsity of Ms. Pruden’s testimony, because trial counsel could not have obtained the documentation needed to conclusively show that Ms. Pruden was in custody at Hazel Plant on April 14, 2015 and did not have the ability to leave the facility on work release at that time. As noted above, trial counsel was dependent upon the State to obtain and provide to the defense the documentation conclusively establishing Ms. Pruden’s custody status on April 14, 2015, and there is no indication that the State

⁷⁰ See generally *Blackwell*, 736 A.2d 971.

⁷¹ See *supra* pp. 32-35.

⁷² See *supra* pp. 45-47.

⁷³ *Younger*, 580 A.2d 552 (citing *Murray*, 477 U.S. at 492); see also *Perez*, ID No. 1807009079, at 6.

⁷⁴ *Flamer*, 585 A.2d at 748 (quoting *Freddy*, 456 U.S. at 172-174); see also *Perez*, ID No. 1807009079, at 6.

ever did. As such, this claim could only be pursued through a postconviction motion, which does allow for expansion of the record.⁷⁵

Furthermore, just as with Claims I and II, for the reasons explained above,⁷⁶ it is apparent that the State's *Brady* violation undermines confidence in the jury's verdict and was not harmless beyond a reasonable doubt. This same showing would have been made on direct appeal, had trial counsel been able to raise the issue. Thus, there is a "substantial likelihood" that if the issue had been raised on appeal, the outcome of the appeal would have been different. Accordingly, Mr. Thomas has demonstrated both cause for relief and prejudice sufficient to overcome the procedural bar of Rule 61(i)(3).

⁷⁵ Del. Supr. Ct. R. 8 ("Only questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."); Del. Supr. Ct. R. 9(a) ("Record — Contents. — An appeal shall be heard on the original papers and exhibits which shall constitute the record on appeal."); Del. Super. Ct. R. Crim. Pro 61(h)(1) ("After considering the motion for postconviction relief, the state's response, the movant's reply, if any, the record of prior proceedings in the case, and any added materials, the judge shall determine whether an evidentiary hearing is desirable.").

⁷⁶ See *supra* pp. 34-35, 46-47.

CLAIM IV. AN EVIDENTIARY HEARING IS NEEDED, PURSUANT TO THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, § 7 OF THE DELAWARE CONSTITUTION, TO DETERMINE WHETHER THE STATE SUPPRESSED MATERIAL IMPEACHMENT EVIDENCE IN RELATION TO MS. PRUDEN'S JUNE 16, 2015 STATEMENT TO DETECTIVE CURLEY.

As neither the recording nor the transcript of Ms. Pruden's June 16, 2015 statement to Detective Curley was included in trial counsel's file, given to Counsel for postconviction review, DAG Lugg provided Counsel with both the recording and transcript upon request. However, Counsel has been unable to determine when Ms. Pruden's June 16, 2015 recorded statement was provided to trial counsel, either in the form of a transcript or an audio file or disc.

It appears the State meticulously kept track of the discovery that was provided to trial counsel in the form of detailed discovery cover letters. (A34-42, 61-73, 81-82). As indicated in the cover letter, on September 26, 2016, the State provided trial counsel with a copy of Mr. Thomas' audio interview with Detective Curley. (A34). On August 24, 2017, as indicated in the cover letter, the State provided trial counsel with CDs containing the recorded statements of Etta Reid (two statements), Leantaye Cassidy and Brandon Lacurts. (A70). On September 16, 2017, trial counsel received recordings of the mid-trial statements of Ms. Pruden and Rammonie Slowe via email. (A73, 81, 82). Thus, with the exception of Ms. Pruden's June 16, 2015 statement, it appears the State provided trial counsel with all of the recorded statements of the witnesses. However, none of the cover letters, or email correspondence in trial counsel's file, indicate that the State provided trial counsel with a transcript or recording of Ms. Pruden's June 16, 2015 statement.⁷⁷

⁷⁷ The final page of the transcript of Ms. Pruden's June 16, 2015 statement that was provided to Counsel by DAG Lugg indicates that this statement was transcribed on September 11, 2016. (A19).

Nevertheless, on September 15, 2017, DAG Puit sent an email to trial counsel in which she wrote:

. . . Today we also interviewed Monique Pruden. She was previously interviewed ny [sic] Detective Curley and *her interview was provided to you. A transcript of her previous interview was also previously provided.* When re-interviewing Ms. Pruden she indicated she saw the shooting and that 'Mutt shot Shannon'. This second interview was recorded and I received a copy of this interview this evening. Please let me know the best way to get a copy of this interview to you tomorrow. (A73).

As such, although there is no supporting documentation in trial counsel's file or in the discovery letters docketed with the Prothonotary, Counsel can only assume that the transcript and recording of Ms. Pruden's June 16, 2015 statement was provided to trial counsel some time prior to September 15, 2017, perhaps in person.

However, upon review, both the transcript and the recording begin as follows:

15:34:42 [START RECORDING]
 [DT enters room]
 DT: All right, let's get you done. Okay.
 MP: You want me to show you (UI)?
 DT: I will, yeah, while I'm here. You recognize anyone in there?
 MP: That's Mutt right here, #5.
 DT: Okay. (A14).

While Counsel recognizes that it is up to the detective as to when he or she begins recording an interview, typically the unedited full recording shows the interview beginning from the moment the subject walks into the room, with often several minutes of nothing happening while the subject is in the room alone, up until the moment the subject leaves the room. Counsel contacted DAG Lugg, who in turn contacted Detective Curley, who confirmed that there is no additional footage. However, what is missing from this record of the interview is the discussion between Detective Curley and Ms. Pruden prior to the when the detective began recording. It is unclear how Ms. Pruden came to give her interview with Detective Curley that day, whether she was in custody for

an offense or was being questioned about another case or whether she initiated contact with law enforcement to speak with them about Mr. Reid's homicide.

Based upon Ms. Pruden's interview with Detective Wiant, there appears to have been some discussion with Officer McKenzie at Wilmington Police Department regarding another case, before Ms. Pruden gave her June 16, 2015 statement to Detective Curley. (A290-291). Ms. Pruden refused to provide any details regarding her discussion with law enforcement, so it is not known whether the conversation with Officer McKenzie happened immediately prior to her conversation with Detective Curley, on the same day, or days, weeks or months apart. (A289-291). Most importantly, it is not known whether anything was promised to Ms. Pruden by Detective Curley or another law enforcement officer, or whether she was given some type of discretion from law enforcement for the statement that she gave, prior to the recorded portion of her June 16, 2015 statement.

Given the unique factual circumstances of Ms. Pruden's statements and testimony, this is important to determine, as the initial part of the conversation between Detective Curley and Ms. Pruden was not recorded, it does not appear any handwritten notes memorializing this interaction was provided to trial counsel, Ms. Pruden refused to speak with Investigator Wiant about her discussions with law enforcement, on the date of Detective Curley's and Ms. Pruden's mid-trial interview, September 15, 2017, there was an active warrant for Ms. Pruden's arrest and yet she was not arrested until after her testimony was given,⁷⁸ and in the end, Ms. Pruden admitted to Investigator Wiant that she was not truthful in either of her pre-trial statements to Detective Curley or in her testimony. (A288-289, 291). These unusual circumstances provide enough of a basis to believe additional impeachment material that the State was required to disclose pursuant to *Brady* was not in fact

⁷⁸ A186, 217, 251-257.

disclosed.⁷⁹

However, Counsel has exhausted all available investigative avenues to determine the nature of this impeachment evidence. As such, it is necessary to utilize the due process function of an evidentiary hearing,⁸⁰ during which Ms. Pruden, Detective Curley, DAG Puit, DAG Zubrow, and any other individual the parties or Court deem relevant, can provide testimony to resolve this issue, one way or the other. Accordingly, Mr. Thomas respectfully requests that an evidentiary hearing be held so that he may be given an opportunity to develop the factual record on this issue, so as to determine whether the State failed to provide impeachment *Brady* material related to Ms. Pruden, apart from the issue of her perjured testimony, to the defense, and if so, what the impact of that *Brady* violation is.

⁷⁹ *Brady*, 373 U.S. at 87 (holding that “suppression by the prosecution of evidence favorable to an accused violates due process when the evidence is material to either guilt or punishment, irrespective of good faith or bad faith of the prosecutor”); *Youngblood*, 547 U.S. at 870 (holding that the prosecutor has a duty to seek out and to learn of any favorable evidence known to parties acting on behalf of the government, including the police, and that if the police fail to provide the prosecutor with any *Brady* material, the prosecutor has an affirmative duty to follow up with the investigating officers to see if they possess any such materials).

⁸⁰ See *Dawson*, 673 A.2d at 1197; *Townsend*, 372 U.S. at 313; *Lee*, 667 F.3d at 406; *Marshall*, 307 F.3d at 116.

CONCLUSION

WHEREFORE, based on the foregoing, Petitioner respectfully requests that this Court grant all appropriate relief, including an evidentiary hearing, and reverse his convictions and remand for a new trial.

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Dated: January 22, 2021

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

**DAMIAN THOMAS,
Defendant.**

I.D. No. 1505012411

CERTIFICATE OF SERVICE

I, Christopher S. Koyste, attorney for Damian Thomas, certify that on January 22, 2021, the foregoing Amended Motion for Postconviction Relief, Exhibits and Appendix Volumes I and II were served upon:

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