RECENT DEVELOPMENTS IN CRIMINAL LAW: 2012 DELAWARE SUPREME COURT DECISIONS

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In 2012, the Delaware Supreme Court issued thirty-two opinions that covered various criminal law issues. This article will briefly summarize some of those decisions in the areas of evidence, search and seizure, and other areas of significance or first impression. Readers are directed to the Court's opinions for the complete statement of the facts and legal analysis of the Court.

I. EVIDENCE DECISIONS

A. Officer's Overview Of Crime Testimony Admissible—*Damiani-Melendez v. State*

In *Damiani-Melendez v. State*,[1] the Court held that police officers' overview testimony about similar characteristics in defendant's robbery offenses was not objected to at trial and did not constitute plain error.[2]

The defendant Damiani-Melendez committed a series of robberies or attempted robberies of retail stores in New Castle County. The robberies were marked by common characteristics including the use of masks, gloves, and black clothing for the robbers and the defendant typically possessed a shotgun. The Delaware State Police in December, 2010 saw the defendant commit a liquor store robbery and he was then arrested for his three-month spree of twelve robberies and two attempted robberies.[3]

At trial, the investigating officers testified about the defendant's involvement with the fourteen charged offenses, based in part on videotapes and photographs that were not admitted at trial. Prior to the testimony of the chief investigating officer, defense counsel stated no objection to the officer's overview testimony about the case that would be based on some hearsay. The officer then testified without objection to an overview outlining the nature of the defendant's offenses.[4]

The Court found that the defendant failed to challenge the admissibility of the officers' testimony at trial and considered the propriety of the evidence under a plain error standard. The Court ruled that the testimony of the chief investigating officer was not cumulative as he was uniquely qualified to testify to the similar facts present in all of the robberies and provide the jury with an overview. The testimony of the one police officer touched on evidence in a videotape that was not admitted at trial. The State did call a witness who testified to the events of that robbery and even if the videotape evidence should have been excluded, the admission of this police testimony was not "clearly prejudicial" to the defendant. The Court found there was overwhelming evidence against the defendant including testimony of a number of

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1. 55 A.3d 357 (Del. 2012).

2. *Id.* at 360.

3. *Id.* at 358-59.

4. *Id.* at 359.

witnesses along with physical evidence in the defendant's possession at the time of his arrest. The Supreme Court ruled there was no plain error and affirmed the judgment of the Superior Court.[5]

B. Improper Vouching In § 3507 Statement Not Permissible—*State v. Richardson*

In *State v. Richardson*,[6] the Court held that a CAC interviewer's testimony that contained opinion testimony about the truthfulness of the complaining witnesses constituted improper vouching.[7]

Defendant Richardson lived with his aunt in Wilmington from 2001 through 2005. During this time, his aunt's granddaughters reported that the defendant sexually assaulted them. The younger granddaughter testified that, when she was six years old and Richardson was sixteen, he forced her to perform oral sex, and that he also committed unlawful sexual contact. The older granddaughter testified that, when she was ten years old and the defendant was twenty, he forced his fingers into her vagina on two separate occasions, and also attempted to force her to perform fellatio. The younger relative first reported the sexual assault to her mother in 2009. After contact with the police, both girls were interviewed by a Child Advocacy Center ("CAC") forensic interviewer who conducted a videotaped interview. The two girls testified at trial and the State offered the recorded CAC interviews at trial without objection. Prior to the admission of the first statement, the CAC interviewer testified about the RATAC interview protocol and her special training. At the conclusion of her testimony, the interviewer stated that victims do not always tell the whole story in a consistent manner but that the interviewer was very aware when a child is telling the truth. The defendant was convicted on four of six charges and appealed his conviction.[8]

On appeal, the Court considered Richardson's challenge to the CAC interviewer's testimony about the RATAC interview techniques and her opinion that the children were truthful. The Court noted that the child witnesses had testified fully at trial and the CAC tapes appeared to be cumulative and were subject to exclusion on that ground. The Court also stated that the purpose of § 3507 was to deal with a turncoat witness and was not intended to allow for a prior statement to be admitted to buttress the testimony of a witness.[9]

The Court did find reversible error in the testimony of the CAC interviewer which was inadmissible and unfairly prejudicial. The State was limited to establishing the foundation for the statement by proving that the statement was voluntary, establishing the content of the prior statement, and by the witness being available for cross-examination.[10] In this case, the witness testified in great detail about her background, training, and interview techniques. The Court ruled that the testimony amounted to improper vouching for the veracity of the two child witnesses and constituted reversible error.[11] In the Court's view, the case turned on the credibility of the complaining witnesses and the defendant, and the

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5. *Id.* at 359-60.

6. 43 A.3d 906 (Del. 2012).

7. *Id.* at 909-10.

8. *Id.* at 907-08.

9. *Id.* at 909 (citing Blake v. State, 3 A.3d 1077, 1082 (Del. 2010); Keys v. State, 337 A.2d 18, 22 (Del. 1975)).

10. *Id.* at 909 (citing Woodlin v. State, 3 A.3d 1084, 1088 (Del. 2010)).

11. *Id.* at 910 (citing Capano v. State, 781 A.2d 556, 595 (Del. 2001); Wheat v. State, 527 A.2d 269, 275 (Del. 1987); Powell v. State, 527 A.2d 276, 279 (Del. 1987)).

CAC interviewer should not have testified about her opinion as to the truthfulness of the two children. The Court reversed the judgment of the Superior Court and remanded for a new trial.[12]

C. Hospital Blood Test Result Inadmissible Where Manufacturer's Specifications Not Followed—*Hunter v. State*

In *Hunter v. State*,[13] the Court ruled that the BAC blood test result was inadmissible where the phlebotomist used an expired blood kit and vigorously shook the sample in violation of the approved manufacturer's specifications.[14]

Defendant Hunter was stopped by Smyrna Police officers for a motor vehicle violation. Hunter was later arrested for DUI after he failed several field sobriety tests, had open beer cans in his truck, and exhibited physical signs consistent with being under the influence. The defendant became combative after being transported to the police station. The police called for an ambulance after Hunter exhibited signs of going into diabetic shock. Once the EMT arrived, Hunter acted in a vulgar, combative manner and the police decided to take him to the hospital to draw blood. Before leaving the police station, the defendant kicked the EMT in the right arm and caused serious injuries. A police officer tasered Hunter to gain his compliance with orders. At the hospital, Hunter was uncooperative and refused the blood draw. After attempting to bite a police officer, Hunter was tasered and the blood sample was then taken by the hospital phlebotomist.[15]

After his conviction for DUI, Assault, and Resisting Arrest, Hunter filed a direct appeal to the Supreme Court. The Court first addressed Hunter's challenge to the admission of the BAC test result of 0.12%. The blood was drawn on September 2, 2009 but the blood test kit supplied by the police had an August 31, 2009 expiration date. The manufacturer's specifications provided that the blood tubes were not to be used after their expiration date. At trial, the police officer also testified that the phlebotomist sealed the tubes after the blood draw and then vigorously shook them. The manufacturer's specifications clearly instructed that the tubes were not to be shaken vigorously. The Court relied on *Clawson v. State*[16] for the rule that the State must follow the manufacturer's protocol in order to establish the necessary adequate foundation for admission of a BAC test.[17] In this case, the Court found there were two independent deviations from the manufacturer's required protocol which both rendered the BAC test inadmissible and the BAC test results should have been suppressed.

Hunter also sought to reverse his convictions for his conduct at the police station. The digital video recorder ("DVR") from the police station was taped over from the night of the defendant's arrest. Hunter asserted that the failure to preserve the tape should result in his acquittal on both charges. The trial judge denied Hunter's motion but did give a *Deberry*[18] missing evidence instruction.[19] On appeal, the Court ruled that the evidence did not support Hunter's claim

12. *Id.* at 911.

13. 55 A.3d 360 (Del. 2012).

14. *Id.* at 364-65.

15. *Id.* at 362-64.

16. 867 A.2d 187 (Del. 2005).

17. 55 A.3d at 365-66 (citing Clawson v. State, 867 A.2d 187, 191, 193 (Del. 2005)).

18. Deberry v. State, 457 A.2d 744 (Del. 1983).

19. The missing evidence instruction was based on the Court's suggested language in Lolly v. State, 611 A.2d 956 (Del. 1992).

that the missing tape, if preserved, would have been case dispositive. Hunter's defense at trial was that he acted without the specific intent or *mens rea* due to a combination of diabetes and PTSD. Hunter did not deny at trial that he had committed the physical acts alleged but rather offered expert testimony that his actions at the police station were involuntary. The Court ruled that the missing evidence instruction was the sufficient remedy and affirmed the Assault and Resisting Arrest convictions.[20]

D. Indirect Hearsay Evidence May Violate Hearsay Rules And Confrontation Clause—*Wheeler v. State*

In *Wheeler v. State*,[21] the Court ruled that a detective's testimony contained improper indirect hearsay statements of unavailable witnesses and also violated the Confrontation Clause, although the error was found to be harmless.[22]

Defendant Wheeler was charged with the shooting of victim Herbie Davis. Davis was shot in the back and leg several times while in the kitchen of the home of Tricia Scott in the Dover area. Two of Scott's children, including Amber, lived with her. Wheeler was Amber's boyfriend and a frequent resident of the house. After having a disagreement, Wheeler came up behind Davis in the kitchen area and shot him several times, then stated "I really don't like you." Davis told the investigating police officer that Wheeler had shot him. Shani Scott, another daughter of Tricia Scott was also present for the shooting.[23]

At trial, Davis identified Wheeler as the person who shot him from behind. Davis also testified that after the shooting, Shani Scott immediately told Amber Scott that "Daemont just shot Herbie-Mr. Herbie." The Supreme Court ruled that this statement was properly admitted as a present sense impression and excited utterance.[24] Davis' statement described a statement made by Shani immediately after the shooting. The statement also satisfied the three elements for admission as an excited utterance.[25] The shooting precipitated Shani's excitement. The statement was made during the time of the exciting event, and the statement related to the starting event. The statement was admissible as both a present sense impression under Del. R. Evid. 803(1) and an excited utterance under Del. R. Evid. 803(2).

The Court did find error in a portion of the investigating detective's testimony. The State indirectly introduced the substance of statements of Shani Scott, Amber Scott, and Mary Zachary. The detective testified, over objection, that after speaking with Shani Scott, he had no reason to believe there was any suspect other than the defendant. He also testified that Scott was able to hear the specific words exchanged between the victim and the defendant. The detective gave similar testimony regarding statements by Amber Scott and the landlord Mary Zachery. The Court found this portion of the officer's testimony amounted to indirect hearsay evidence and placed the substance of the unavailable witnesses before the jury. The officer was asked, with respect to each witness, whether anyone other than Wheeler was identified.

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20. 55 A.3d at 368-72.

21. 36 A.3d 310 (Del. 2012).

22. *Id.* at 317-21.

23. *Id.* at 312-13.

24. *Id.* at 314 (citing Del. R. Evid. 802; Del. R. Evid. 803(1)(2)).

25. *Id.* at 314-15 (citing Brodie v. State, 16 A.3d 937, 2011 WL 927673, at *2 (Del. Mar. 17, 2011) (TABLE)).

The reasonable inference was that each witness had identified Wheeler as the suspect in the shooting and the testimony violated the hearsay rules.[26]

The Court also held that the State violated Wheeler's Sixth Amendment right to confrontation when it admitted the substance of the inadmissible statements of the three witnesses. Under *Crawford*, the Confrontation Clause prohibits admission of testimonial statements of an unavailable witness.[27] The *Wheeler* Court noted that interrogations by law enforcement are testimonial under *Crawford* and subsequent federal precedent.[28] The *Wheeler* Court noted that the jury could readily infer the substance of the non-testifying witnesses even if there was no verbatim account of the statement. Finally, the Court found any error to be harmless as the defendant was well-known to the victim and the other eyewitness Shani Scott whose excited utterance was admitted at trial. The testimony by the detective about the indirect statements of the other three witnesses was at most cumulative.[29]

II. SEARCH AND SEIZURE DECISIONS

A. Police Authority To Obtain Identification From Passengers In Vehicle—*Stafford v. State*

In *Stafford v. State*,[30] the Court held that the police may request a car passenger produce identification before allowing that person to drive a vehicle from the scene and police could lawfully search the suspect incident to his arrest for criminal impersonation.[31]

Defendant Stafford was a passenger in a vehicle stopped by Wilmington Police for tinted windows. The driver had a suspended license. Rather than tow the vehicle, the police were going to allow Stafford to drive the vehicle from the scene. The police officer asked the defendant for his identification. The defendant had no identification on his person. He gave the false name of "Daren Miller" along with an address of 401 Robinson Street and a birth date of November 13, 1979. The police ran the information in the Delaware Criminal Justice Information System ("DELJIS") and determined that there was no such licensed driver in Delaware. The officer tried different combinations and variations of the information but obtained no matches. The police then detained Stafford pending identification and he was handcuffed and the officer began to place him into the police car when a firearm fell out of the defendant's pant leg. Stafford was convicted on the charge of possession of a deadly weapon by a person prohibited, carrying a concealed deadly weapon, and criminal impersonation.[32]

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26. *Id.* at 316 (citing United States v. Meises, 645 F.3d 5 (1st Cir. 2011); Mitchell v. Hoke, 745 F. Supp. 874 (E.D.N.Y. 1990), aff'd, 930 F.2d 1 (2d Cir. 1991)).

27. *Id.* at 318 (citing Crawford v. Washington, 541 U.S. 36, 53-54 (2004)).

28. *Id.* (citing Crawford, 541 U.S. at 53-54; Davis v. Washington, 547 U.S. 813, 822-24 (2006); Ocampo v. Vail, 649 F.3d 1098, 1113 (9th Cir. 2011); Ryan v. Miller, 303 F.3d 231 (2d Cir. 2002); Hutchins v. Wainwright, 715 F.2d 512 (11th Cir. 1983); Favre v. Henderson, 464 F.2d 359 (5th Cir. 1972)).

29. *Id.* at 320 (citing Sullivan v. Louisiana, 508 U.S. 275, 279 (1993); Chapman v. California, 386 U.S. 18 (1967); Holmes v. State, 11 A.3d 227, 2010 WL 5043910 (Del. Dec. 9, 2010)).

30. 59 A.3d 1223 (Del. 2013).

31. *Id.* at 1226-28.

32. *Id.* at 1226.

In his appeal, Stafford claimed that the police request for him to produce identification during the car stop was invalid. The Court stated that the police, during a traffic stop, may request that a passenger produce identification and step out of the car, and that questions to a passenger about his identity are not beyond the scope of the stop.[33] The Court found that the police properly stopped the vehicle for a tinted window violation. Under the Fourth Amendment, the Court declared that a passenger can become a suspect by his actions during a traffic stop which can provide probable cause for an arrest.[34] The police in this case did not search Stafford on the basis that he was a passenger, but in order to determine if he could drive the vehicle.[35] The police officer did frisk Stafford once there was probable cause to believe he had committed criminal impersonation. The Court found probable cause in light of the officer's unsuccessful attempts to locate any information for the name and related information in the State DELJIS system. That search included the driver's license, identification card, and criminal history databases.[36] Finally, the Court ruled that the police officer discovered the concealed firearm during a proper search of Stafford's person incident to arrest. Even for the offense of criminal impersonation, the Court held that the officer had the authority to conduct the search which led to the recovery of the firearm.[37]

B. Inevitable Discovery—*Roy v. State*

In *Roy v. State*,[38] the Court held that a murder weapon seized from the defendant was admissible under the inevitable discovery doctrine where the police observed the defendant alone on a street and unlawfully seized him but then found the victim's body a short time later.[39]

The police received a dispatch on February 17, 2010 to respond to an assault in progress reported at Seventh and Walnut Streets in Wilmington. A nearby resident, while in his apartment, heard a scream from outside around 5:00 a.m. About ten minutes later, the same resident left his apartment and heard a male voice state "who are you?" from across the street. The male was observed standing over a person lying in the street. The resident then called the police. When the police arrived, they first observed defendant Roy as the only person on the dark street. Roy hid his face and began to walk in the opposite direction only to be stopped by two marked cars coming down the street in the other direction. The police then asked Roy to approach the police car and he was placed in handcuffs. In response to a question, Roy

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33. *Id.* at 1227 (citing United States v. Diaz-Castaneda, 494 F.3d 1146, 1153 (9th Cir. 2007); Tann v. State, 21 A.3d 23, 26 (Del. 2011); Loper v. State, 8 A.3d 1169, 1173 (Del. 2010)).

34. *Id.* at 1228 (citing Holden v. State, 23 A.3d 843, 847 (Del. 2011); Caldwell v. State, 780 A.2d 1037, 1050 n.33 (Del. 2001)).

35. *Id.* at 1228. The Court distinguished Holden where the police seized a passenger in a car that was stopped because of a fictitious tag and there was no other reason to search a passenger in the vehicle. 59 A.3d at 1228 (citing Holden, 23 A.3d at 845-49).

36. *Id.* at 1229-31. The Court declined to follow the decision of the Alaska Court of Appeals which was distinguishable because it was unclear in that case whether the defendant was a resident of Alaska. *Id.* at 1230 (citing Erickson v. State, 141 P.3d 356 (Alaska Ct. App. 2006)).

37. *Id.* at 1231-32 (citing United States v. Robinson, 414 U.S. 218, 234-35 (1973); Negron v. State, 979 A.2d 1111, 2009 WL 2581714, at *4 (Del. 2009) (ORDER)).

38. 62 A.3d 1183 (Del. 2012).

39. *Id.* at *4-6.

admitted that he had a knife. The police also observed that the defendant's hands were covered in blood. Another police officer then radioed that she had found an unconscious victim. Roy was then taken to the police station where he claimed that he and the victim had been robbed by unknown suspects, and that Roy wrestled away their knife in the altercation. Roy's clothes tested consistent with the victim's blood. Blood splatter evidence was found to conflict with Roy's version of events. Roy was also observed on a motion-activated camera. Prior to trial, the parties stipulated that the State could introduce evidence of Roy's drug usage on the day prior to the murder but not evidence of drug dealing. Roy was tried and convicted on murder and weapon charges.[40]

On appeal, the Court first ruled that the police lacked a basis to conduct an investigatory stop of Roy. The defense conceded that the police had reasonable suspicion that a crime had been committed near the area but challenged the stop of Roy under the Fourth Amendment and DEL. CONST. art. I, § 6. There was no information that linked Roy to the crime as the police had no information about the suspect other than that he was a male. The Court found that the uncorroborated tip from a 911 call did not provide any specifics about the suspect or his future behavior. The Court declared that the police stopped Roy because he was the first male they saw and the defendant's close proximity to the crime area was insufficient to establish reasonable suspicion for the detention.[41]

The Court did find under the inevitable discovery doctrine that the physical evidence from Roy would have been obtained during the course of the routine police investigation.[42] The police were aware of a potential assault with a person lying on the ground. The police arrived at the scene within three minutes and observed Roy walking away from the intersection in issue. Two police cars drove up to Roy as he walked up the street. The police did not intend to allow Roy out of their sight and the Court found that it was inevitable that Roy would have been detained within the few minutes that the police took to locate the victim's body. The Court also found that it would be inevitable that the police would have then been justified in patting Roy down for weapons and would have located the knife and seized the other inculpatory evidence. In ruling that the trial court properly denied the defense suppression motion, the Court stated that it had applied the inevitable discovery rule to similar facts in *Cook v. State*.[43]

C. Sufficiency Of Search Warrant Affidavit—*Acuri v. State*

In *Acuri v. State*,[44] the Court held that the police presented sufficient evidence, including confirmed information from a past proven confidential source and a drug dog alert, in an affidavit to search the defendant's hotel room.[45]

A Delaware State Police detective had received information from a confidential source ("CS") that defendant Acuri was selling marijuana in New York and Delaware. The CS told the police that defendant had more than five pounds of marijuana in his hotel room. The CS identified the defendant from a website and a driver's license picture, and provided

40. *Id.* at *1-2.

41. *Id.* at *3-4 (citing Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008); Jones v. State, 745 A.2d 856, 870 (Del. 1999); Bradley v. State, 976 A.2d 170, 2009 WL 2244455 (Del. 2009)).

42. *Id.* at *4-6 (citing Thomas v. State, 8 A.3d 1195 (Del. 2010); Cook v. State, 374 A.2d 264 (Del. 1977)).

43. *Id.* at *6 (quoting Cook, 374 A.2d at 268).

44. 49 A.3d 1177 (Del. 2012).

45. *Id.* at 1179-80.

the license plate and vehicle description for the defendant's vehicle. Another agency supplied a drug detection dog which the police walked by the defendant's hotel room and the defendant's vehicle in the parking lot. The dog alerted to the presence of drugs in both the hotel room and the vehicle. The police obtained a search warrant and the execution of the warrant uncovered drugs in the hotel room and the defendant's vehicle.[46]

On appeal, defendant challenged the sufficiency of the search warrant affidavit. The Court noted that the affidavit contained a conclusory statement that the CS was past proven reliable and also did not describe that the drug dog was properly trained. The Court stated that the better practice is for the affidavit to contain "a brief statement about the accuracy of the CS's past tips" and to describe whether the police dog is "certified" or a "fully trained" dog for detecting drugs. The Court still concluded that the affidavit was sufficient to establish probable cause. The police received information from a CS who was not anonymous, and who had prior police dealings and was able to confirm the defendant's identity from a photo. The police were able to verify specific information that they received from the CS including the location of the hotel room and the defendant's vehicle. The magistrate could have reasonably concluded that the dog brought in by the other agency was a narcotics dog trained to detect drugs. The Court found that the drug alert on the identified hotel room confirmed the information from the CS and provided probable cause for the warrant and affirmed the ruling of the Superior Court denying defendant's motion to suppress.[47]

D. Sufficiency Of Facts In Search Warrant For Search For Patient Files And Scope Of Warrant—*State v. Bradley*

In *State v. Bradley,*[48] the Court held that the police presented sufficient facts to support a search of the defendant's property for patient files pertaining to the commission of a crime or crimes, and ruled that the police did not exceed the scope of the warrant in searching a white outbuilding which was described in the warrant.[49]

Defendant Bradley appealed from convictions on fourteen counts of Rape First Degree, five counts of Assault Second Degree, and five counts of Sexual Exploitation of a Child for crimes of sexual and physical abuse of young children. Bradley was convicted in a non-jury trial and part of the State's evidence included video evidence made by Bradley of sexual assaults against his child patients.[50]

In December, 2009, a retired Delaware State Police officer received a report from a mother that her daughter had been touched on the vagina during a routine medical visit by then Dr. Bradley. The information was reported to the police and the victim gave an interview to the Child Advocacy Center. In 2008, the police had tried unsuccessfully to obtain a warrant to search Bay Bees Pediatrics for child pornography evidence. The police had received a 2008 complaint that Bradley had conducted a full vaginal examination on a twelve year-old girl who reported a sore throat and pink eye. This exam lasted for several minutes and the victim cried to her mother after and stated that she felt "dirty" about the incident. The police also had information that the defendant had caused a six year old girl with Attention Deficit Disorder

46. *Id.* at 1178-79.

47. *Id.* at 1179-80 (citing United States v. Rivera, 347 Fed. Appx. 833, 837-38 (3d Cir. 2009)).

48. 51 A.3d 423 (Del. 2012).

49. *Id.* at 427.

50. *Id.*

to disrobe during an office visit and the defendant attempted to perform a vaginal examination on the patient. There was also a case involving a seven year old girl who reported complaints of excessive urination and was subjected to two vaginal exams by Bradley outside the view of the victim's mother. The police were also aware of a 2005 investigation by the Milford Police Department.[51]

The search warrant application sought to search for "[f]iles to include medical files relating to the treatment and care" of the child victims, including paper files. The warrant also sought to seize "[v]ideo and photographs." The property was described as "[a] two story residence style building, white in color, located at 18259 Coastal Highway, Lewes, DE…." The police affiant in the affidavit of probable cause detailed the reports of inappropriate touching and examinations as well as Bradley kissing patients on the mouth, performing vaginal exams for no apparent medical reason, and carrying patients around the office. The affiant cited to reports of other doctors who began seeing patients who had transferred from Bradley's office after he performed improper vaginal examinations. The police detailed Bradley's practice of using cameras in his office to take and manipulate pictures of patients. The affidavit described the property and also contained reference to Dr. Bradley's conduct of carrying a patient to the outbuilding behind the office. Bradley was also described as having access to the computer images via his home computer. The police noted that, in seeking to seize Bradley's computers and electronic storage devices, Bradley could use deceptive file names which could require the police to search the stored data.[52]

When the police executed the warrant, they found four buildings, including the main building (Building A) and a white outbuilding (Building B). There was also a white garage (Building C) and a tan shed (Building D). In Building A, the police seized a video camera on the exam table in the first exam room. The police also seized a digital camera from the office area near the reception area. The police found paper files for seven of the eight victims listed in their search warrant with the exception of the 2005 victim identified by the Milford Police Department. In Building B, the police found an office with a desk and shelves. They seized numerous digital recording and storage devices including thumb drives, hand-held records, a Sony Handycam, a Sony Net Share camera, a DVD, two pen cameras, and a Dell computer with a HP 4G thumb drive. No evidence was seized from Building C and thirty-four memory cards, a thumb drive, and a desktop computer were seized from Building D.[53]

On December 17, 2009, the day after execution of the search warrant, a police detective began to view the digital evidence seized from the Building B computer. The 4G thumb drive contained an image of Bradley reaching to remove the diaper of a three year old child who was facing the camera. The detective immediately stopped the video and obtained a new warrant to search all of the digital media for evidence of sexual exploitation or child pornography.[54]

Prior to trial, Bradley moved for suppression of all evidence seized in the December 16 and 17th searches. The Superior Court denied the suppression motion after a two day hearing, followed by briefing by the parties. Bradley was convicted in a non-jury trial at which videotape evidence seized in the searches was used by the State. The videos contained some images of the defendant carrying young children to the basement in Building A. The police had also obtained evidence that Bradley used a hidden pen camera while performing vaginal examinations. The video evidence showed violent, forcible rapes of young toddlers in Building B.[55]

51. *Id.* at 428.

52. *Id.* at 428-29.

53. *Id.* at 429-30.

54. *Id.* at 430.

55. *Id.* at 430-31.

On appeal, the Supreme Court ruled that the search warrant alleged sufficient facts to support a search of the "white outbuilding" (Building B).[56] The Court found that the affidavit clearly described that Bradley used the white outbuilding on the property and had been observed by the father of one patient carrying the patient to that outbuilding. The affidavit also referenced other witnesses and complainants who stated that Bradley had carried patients around during their medical examinations.[57] The Court concluded that there was a reasonable basis to find that Bradley had carried patients to Building B for medical examinations. There was a reasonable inference that a search would locate patient files, in either documentary or photographic form, in Building B.[58] The Court also rejected Bradley's argument that there was an insufficient link between the patient files to be searched and the patient reports of inappropriate examinations. The Court noted that the affidavit described a number of the defendant's vaginal examinations that occurred during routine medical visits and the reasonable inference was that Bradley was using the improper examinations for the purpose of sexual contact. The Court ruled that the patient files would be relevant to determine if the examinations were appropriate and also to corroborate or contradict any timeline for the treatment.[59]

The Court also rejected the argument that the warrant was defective for failing to specifically state that the defendant kept his patient files in electronic format. The Court again declared that the affidavit did detail Bradley's use of video recording equipment in his office and his manipulation of digital pictures on his computer. The affiant also stated his knowledge that doctors store patient records in computer form. The Court concluded that the digital images and videos could properly be considered medical files and could be used to determine the appropriateness of medical treatment and corroborate the date of the child's treatment.[60]

The Court also held that the police did not exceed the scope of the search warrant when they searched Building B.[61] The warrant was issued for the search of "BayBees Pediatrics, 18259 Coastal Highway" and included a reference to "a white outbuilding" on the property. The warrant did not limit the search to any particular part of the property, and the officers could and did reasonably conclude that they were authorized to search Building B, the white outbuilding.[62] The defendant challenged the search of Building B which was where the police located the key video evidence used against him. The Court found that the warrant specifically mentioned that Bradley used video equipment to manipulate patient images from "his office" and from his personal computer. The Court concluded that the warrant clearly authorized the police search of Building B. The challenges to the search of Building C and D were found to be immaterial as the police did not collect any evidence from those buildings.[63]

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56. *Id.* at 431-33. The Court reviewed the sufficiency of the warrant under the totality of the circumstances test in Illinois v. Gates, 462 U.S. 213, 238 (1983). 51 A.3d at 431.

57. *Id.* at 432.

58. *Id.*

59. *Id.*

60. *Id.* at 432-33.

61. *Id.* at 433 (citing Marron v. United States, 275 U.S. 192, 196 (1927); Cooke v. State, 977 A.2d 803, 854 (Del. 2009)).

62. *Id.* at 434.

63. *Id.* at 434-35.

Finally, the Court rejected the challenge to the seizure of the computers, digital storage devices, and recording equipment in Buildings B and D. The Court again stated that a doctor's recording of a patient is a form of a patient "file" and the police were authorized to search for those files on the computers and electronic storage devices at the property.[64] The police were not limited to only the seizure of paper patient files under the search warrant. There was also no requirement that the police only search for digital files that were clearly labeled by patient name or exact date of visit. The Court found that the trial court "properly found a sufficient nexus between the conduct alleged and the file searched for" that supported the police detective's decision to open the seized electronic file and further found that the detective properly closed the file when he identified evidence of crimes outside the scope of the warrant.[65] The Court concluded that the challenges to the search warrant and scope of the search lacked merit and affirmed the judgment of the Superior Court.[66]

III. OTHER SIGNIFICANT DECISIONS

A. Defendant Not Entitled To Offset In Restitution Hearing For Amounts Claimed To Be Owed By Victim—*Mott v. State*

In *Mott v. State*,[67] the Court held that a defendant at a restitution hearing was not entitled to claim a set off for debt owed by the victim when the claim was barred by *res judicata*.[68]

Defendant Mott, operating a company Pulse Construction, entered a 2005 contract to build a new home. The homeowners, the Littletons, agreed to a draw schedule for the defendant to receive payments. Two mechanics liens were subsequently posted on the property by subcontractors who were not paid by Pulse Construction. Mott was charged and convicted of New Home Construction Fraud for diverting the funds paid by the homeowner. The trial judge then ordered that the defendant pay restitution of $68,567.89 to the Littletons for the principal amount of the liens, attorney's fees, interest, and costs. Mott claimed that the Littletons owed him $20,000 and he should be entitled to a set off of that amount. The trial court ruled that the dispute over the $20,000 was a civil issue and could not used to reduce defendant's restitution obligation.[69]

In a prior mechanics lien action, subcontractor CRM had sued Mott and the Littletons for unpaid payments for masonry work. Littleton crossclaimed against Mott for failing to pay the money owed to CRM. In this mechanics lien action, the trial court found the work to be satisfactory and ruled in favor of CRM.[70] On appeal, the Court noted that Mott should have raised the issue of any set off from the Littletons as a counterclaim in the mechanics lien action. Mott's

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64. *Id.* at 435 (United States v. Giberson, 527 F.3d 882, 886-87 (9th Cir. 2008); United States v. Reyes, 798 F.2d 380, 383 (10th Cir. 1986)).

65. *Id.* at 436.

66. *Id.*

67. 49 A.3d 1186 (Del. 2012).

68. *Id.* at 1189-91.

69. *Id.* at 1187-88.

70. Constr. Resource Mgmt. v. Littleton, C.A. No. 06L-03-031-RFS, at *5, 2008 WL 4117186 (Del. Super. Aug. 28, 2008).

counterclaim was compulsory under SUPER. CT. CIV. R. 13(a) and his claim for set off was barred by the doctrine of *res judicata*.[71] The Court did state that the public policy behind *res judicata* barred the defendant from raising the claimed prior debt in the restitution hearing. The Court did state that it was not holding that "no viable claim [could] ever be asserted to offset a claim of entitlement to restitution." The Court noted that the primary purpose of the restitution hearing was to make the victims whole and the trial judge did not commit error in excluding testimony about the set off in this case.[72] The trial judge also did not commit error in awarding attorney's fees, interest on the liens, and other related costs as such an award was permissible under 11 *Del. C*. § 4106.

B. Possession Of Concealed Deadly Weapon Inside Defendant's Own Residence—*Griffin v. State*

In *Griffin v. State*,[73] the Court adopted a three part test to determine whether the CCDW statute was unconstitutional as applied to the defendant's possession of a weapon in his residence.[74]

The defendant Griffin and his girlfriend were present in their house when the police responded to the residence due to a domestic dispute. Griffin was packing and unpacking boxes due to a split from his girlfriend when the police arrived. Griffin had a steak knife on his person and was seated in the basement with the lights out. Griffin's girlfriend told the police that he was in the basement, had been drinking, and may have a knife. Griffin refused to immediately come upstairs despite calls from the police. When he did go upstairs, Griffin had an open beer can in his hand. Griffin was "mouthy" with the police and there was a scuffle during which the defendant bit an officer. Griffin was taken to the hospital for treatment and the police discovered the knife on Griffin's person. Griffin testified that he told the police about the knife as soon as he was handcuffed. Griffin was convicted of resisting arrest, carrying a concealed deadly weapon ("CCDW"), and one count of criminal mischief.[75]

The Supreme Court considered whether the CCDW statute, 11 *Del. C*. § 1442 was unconstitutional as applied to the facts of Griffin's case. Under DEL. CONST. art. I, § 20, a person "has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use." The Court had previously ruled that DEL. CONST. art. I, §20 did not entitle a person to conceal a weapon.[76] The Court relied on *State v. Hamadan*[77] that held the Wisconsin CCDW statute was unconstitutional as applied to a store owner who kept a gun under the counter of his liquor store near the cash register.[78] The Court adopted a three part test from *Hamadan*:

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71. 49 A.3d at 1189 (citing Rumsey Elec. Co. v. Univ. of Del., 334 A.2d 226, 228 (Del. Super. 1975); Epstein v. Chatham Park, Inc., 153 A.2d 180, 183 (Del. Super. 1959)).

72. 49 A.3d at 1190 (citing Blake v. Myrks, 606 A.2d 748, 750 (Del. 1992)).

73. 47 A.3d 487 (Del. 2012).

74. *Id.* at 491-92.

75. *Id.* at 489.

76. Smith v. State, 882 A.2d 762, 2005 WL 2149410, at *3 (Del. Aug. 17, 2005) (TABLE)).

77. 665 N.W.2d 785 (Wis. 2003).

78. *Id.* at 490.

> First, the court must compare the strength of the state's interest in public safety with the individual's interest in carrying a concealed weapon. Second, if the individual interest outweighs the state interest, the court must determine "whether an individual could have exercised the right in a reasonable, alternative manner that did not violate the statute." Third, the individual must be carrying the concealed weapon for a lawful purpose.[79]

Applying the *Hamandan* test, the *Griffin* Court first found that the defendant had an interest in using a knife in his house to open a box. Second, the Court found that it would be unreasonable to restrict the manner in which a person could carry a legal weapon from room to room in his own house.[80] Thirdly, the Court stated that Griffin was carrying the knife for a lawful purpose, to open boxes in his house and did not attempt to use it as a weapon. The Court concluded that the defendant's CCDW conviction must be reversed. The Court ruled that Griffin had a constitutional right to bear arms which authorized his possession of a concealed knife. The Court then declared that once the police confronted the defendant and asked if he had a knife, the balance of interests shifted and there was a disputed issue on whether Griffin advised the police that he was armed. Griffin said he told the police immediately about the weapon while the police testified that Griffin said the weapon was in the basement. The Court ordered a new trial for the jury to determine if the police version was credible and if so, the defendant could be convicted of CCDW. If the jury believes the defendant's version, he could not be convicted.[81]

C. Automatic Expungement Of Juvenile Record For Person Obtaining Gubernatorial Pardon—*Arnold v. State*

In *Arnold v. State*,[82] the Court held that a person who obtained a gubernatorial pardon for an adult conviction was entitled to an automatic expungement of his juvenile record under 10 *Del. C.* § 1013.[83]

Defendant Arnold was charged with ten separate offenses as juvenile between the ages of 13 and 15, and was adjudicated delinquent of seven offenses.[84] Of the other three charges, Arnold was found not guilty of one, one was dismissed and one was *nolle prossed.* As an adult at age 20, Arnold was charged and pled guilty to Terroristic Threatening. In 2010, Arnold successfully obtained a Pardon from the Governor on the Terroristic Threatening conviction. The Pardon application was not opposed by the State. Arnold sought the Pardon in part to allow him more employment opportunities. Arnold then filed a Petition of Juvenile Expungement Record which sought an "automatic expungement" under 10 *Del. C.* § 1013. The Family Court denied the petition based on 10 *Del. C.* § 1001(a)(b) and the extent of Arnold's juvenile record.[85]

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79. 47 A.3d at 490-91 (citing State of Wisconsin v. Hamdan, 665 N.W.2d 785 (Wis. 2003)).

80. 47 A.3d at 491 (quoting State v. Stevens, 833 P.2d 318, 319 (Or. App. 1992)).

81. *Id.* at 491.

82. 49 A.3d 1180 (Del. 2012).

83. *Id.* at 1185-86.

84. Arnold was a pseudonym assigned by the Court for the appellant. Arnold was adjudicated delinquent of charges of Assault in the Third Degree, Felony Receiving Stolen Property, Felony Theft, Unlawful Sexual intercourse in the First Degree, Attempted Unlawful Sexual Intercourse in the First Degree, Unlawful Sexual Contact in the Second Degree, and Receiving Stolen Property. *Id.* at 1180-81 n.1-2.

85. *Id.* at 1181-82.

The Supreme Court found that § 1013 unambiguously provided that an individual who obtained a pardon shall automatically have any juvenile record expunged. The Court rejected the argument that the provisions of the section should be limited to a pardon for a juvenile offense. The Court found that the statute applied without qualification to the individual's "juvenile record" and ruled that the literal meaning of the statute supported an automatic expungement for Arnold.[86]

The Court noted that the synopsis of the original bill enacting § 1013 did not limit the expungement to cases where the individual obtained a pardon for juvenile offenses.[87] There was also no conflict between the Court's interpretation of § 1013 and 10 *Del. C*. § 1001(a) which allows for discretionary expungements. Finally, the Court declared that its interpretation of § 1013 was consistent with the public policy of the General Assembly to promote a clear social policy of rehabilitation for juvenile offenders.[88] The Court reversed the judgment of the Family Court and ordered that Arnold's record be expunged pursuant to § 1013.

D. Guilty Plea Bars Subsequent Challenge To Sufficiency Of Underlying Evidence—*Panuski v. State*

In *Panuski v. State*,[89] the Court held that a defendant was precluded from raising a due process or sufficiency of the evidence challenge to his conviction once he entered a guilty plea to those offenses.[90]

Defendant Panuski had filed a Del. Super. Ct. Crim. R. 61 motion in Superior Court challenging his conviction in Superior Court. Defendant pled guilty to two of the twenty counts in his indictment for Dealing in Child Pornography ("DCP"), a class B felony. Prior to sentencing, Panuski filed a motion to merge or downgrade his offenses so that he would be sentenced on the charge of Possession of Child Pornography, a class F felony. This motion was denied by the Superior Court and the defendant was sentenced to eight years in jail, suspended after four years. The Supreme Court affirmed on the direct appeal. The Superior Court also denied defendant's Rule 61 motion attacking his plea and sentence.[91]

On appeal, Panuski first argued that his conviction was in violation of due process because the State did not prove the elements of DCP as the evidence was that he only possessed the pornographic images knowingly, not intentionally. The Supreme Court first ruled that this claim was barred under Rule 61(i)(3) as the defendant did not raise it on direct appeal. The Court also ruled that by pleading guilty, the defendant was foreclosed from challenging the sufficiency of the evidence of the underlying charges.[92] The Court next found that the defendant's double jeopardy claim was barred as it had been considered and decided against the defendant on direct appeal.[93]

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86. *Id.* at 1183 (citing Lexecon Inc. v. Milberg Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998) ("[T]he mandatory 'shall' … normally creates an obligation impervious to judicial discretion."); 10 Del. C. § 1013).

87. 49 A.3d at 1184 (citing 75 Del. Laws ch. 146, synopsis (2005)).

88. *Id.* (citing In re Request of Governor, 950 A.2d 651, 656 (Del. 2008); 10 Del. C. § 1013).

89. . 41 A.3d 416 (Del. 2012).

90. *Id.* at 420-21.

91. *Id.* at 418-19.

92. *Id.* at 420 (citing Fink v. State, 16 A.3d 937, 2011 WL 1344607, at *1 (Del. Apr. 7, 2011) (TABLE)).

93. *Id.* at 421 (citing Del. Super. Ct. Crim. R. 61(i)(4)).

On the third claim, the Court did not find evidence to support defendant's claim of ineffective assistance of counsel. His defense counsel pursued a reasonable defense strategy even if he was unable to obtain a reduced plea from the State, and defense counsel provided competent representation at the sentencing hearing.[94] The Court also found no basis for defendant's claim that the State abused its discretion in charging DCP as opposed to Possession of Pornography. The State had probable cause to support the DCP charges based on statements obtained from the defendant about the accessibility of other users to child sexual abuse videos on his computer.[95] Finally, the Court found no support for the claim that the trial court "misled" the defendant during the plea colloquy. Defense counsel represented that Panuski understood the plea to two counts of DCP and Panuski so stated on the TIS Guilty Plea form. Panuski also admitted to possessing two images at the sentencing hearing and understood from advice of counsel that mere possession subjected him to conviction under the DCP statute. The Court affirmed the judgment of the Superior Court.[96]

E. Mandatory Accomplice Testimony Jury Instruction—*Brooks v. State*

In *Brooks v. State*,[97] the Court held that it was plain error for a trial judge to not give a jury instruction on accomplice testimony when an admitted accomplice testifies and further held that trial judges must give a modified *Bland* instruction when the State offers accomplice testimony.[98]

In *Brooks*, the Court consolidated two appeals that presented questions regarding accomplice testimony. The Court declared that trial judges must give a modified version of the *Bland*[99] instruction, regardless of a request by defense counsel or the presence of any evidence corroborating the witness' testimony. The Court reached this ruling after tracing the recent decisions regarding the need for accomplice witness instructions and overruled those cases that deviated from the rule in *Bland*.[100] The modified *Bland* instruction must be given when an accomplice witness testifies, whether charged as an accomplice or not.[101] The new mandatory accomplice instruction approved by the Court is:

> A portion of the evidence presented by the State is the testimony of admitted participants in the crime with which these defendants are charged. For obvious reasons, the testimony of an alleged accomplice should be examined by you with more care and caution than the testimony of a witness who did not participate in the crime charged. The rule becomes particularly important when there is nothing in the evidence, direct or circumstantial, to corroborate the alleged accomplices' accusation that these defendants

94. *Id.* at 421-22 (citing Strickland v. Washington, 466 U.S. 668, 687 (1984); Swan v. State, 28 A.3d 362, 383 (Del. 2011)).

95. *Id.* at 422 (citing Albury v. State, 551 A.2d 53, 61 (Del. 1988) (citing Wayte v. United States, 470 U.S. 598, 607 (1985); 11 Del. C. § 1109(4)).

96. *Id.* at 423.

97. 40 A.3d 346 (Del. 2012).

98. *Id.* at 348.

99. Bland v. State, 263 A.2d 286 (Del. 1970).

100. 40 A.3d at 349-50.

101. *Id.* at 350 (citing Erskine v. State, 4 A.3d 391, 394 (Del. 2010)).

> participated in the crime. Without such corroboration, you should not find the defendants guilty unless, after careful examination of the alleged accomplices' testimony, you are satisfied beyond a reasonable doubt that it is true and you may safely rely upon it. Of course, if you are so satisfied, you would be justified in relying upon it, despite the lack of corroboration, and in finding the defendants guilty.[102]

The Court next applied the new rule to the individual appeals. Appellant Owens was tried and convicted on crimes related to one robbery but acquitted on another robbery. At trial, the State called a charged accomplice who testified to the defendant's involvement in the offenses. Defense counsel did not request a *Bland* instruction but the trial court gave a model accomplice instruction. The Court ruled that the new required *Bland* instruction will be applied to future cases and the trial judge correctly instructed the jury on the law at the time of the 2007 trial.[103]

The Court next considered appellant Brooks' claim of ineffective assistance of counsel. Brooks was convicted on drug charges after police executed a search warrant at a townhouse leased by the defendant and his girlfriend Rose Epps. Epps testified at trial against Brooks and the State offered other significant independent evidence to support the drug charges. Brooks was convicted of a number of drug and weapon offenses and sentenced as a habitual offender. Brooks' trial attorney did not request an accomplice testimony instruction and the trial judge did not give one. The Court affirmed Brooks' convictions for drug and weapon offenses which were supported by independent evidence, and reversed his conspiracy second conviction that was based solely on accomplice testimony.[104]

F. Bifurcation Of § 777A Unlawful Contact By A Sex Offender Charges—*Monceaux v. State*

In *Monceaux v. State*,[105] the Court held that, in all cases involving charges of Unlawful Sexual Contact by a Sex Offender, the issue of the defendant's sex offender status must be bifurcated and decided in a separate proceeding after the jury trial.[106]

The defendant Monceaux was indicted on three counts of Unlawful Sexual Contact in the Second Degree, one count of Offensive Touching, and three counts of Sex Offender Unlawful Sexual Conduct Against a Child. Monceaux moved to sever the Unlawful Sexual Contact charges on constitutional grounds. The State filed an amended indictment that charged three counts of Unlawful Sexual Contact in the Second Degree and one charge of Offensive Touching. The amended indictment did not reference the defendant's sex offender status. At a jury trial, Monceaux was convicted on all charges. He then waived a jury trial on the sex offender status issue and the trial judge, in a bench trial, found Monceaux was a registered sex offender at the time of the offenses. Monceaux was sentenced on the charges of Unlawful Sexual Contact by a Sex Offender and on the offensive touching charge.[107]

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102. *Id.* (citing Bland, 263 A.2d at 289-90).

103. *Id.* at 350-52.

104. *Id.* at 352-55.

105. 51 A.3d 474 (Del. 2012).

106. *Id.* at 478.

107. *Id.* at 476-77.

On appeal, Monceaux challenged the constitutionality of his conviction for Unlawful Sexual Contact by a Sex Offender, in violation of 11 *Del. C*. § 777(a). The Court found that any due process issue under the statute was moot due to the bifurcated procedure conducted by the Superior Court. The jury did not hear any evidence regarding the defendant's sex offender status. This procedure eliminated the potential *Getz* issue from the introduction of a defendant's prior sex offender status in a trial that also includes other charges.[108] The Court noted that any introduction of the sex offender status evidence was arguably inconsistent with the defendant's presumption of innocence. The Court held that bifurcation is required for all future trials under § 777A. The Court noted that its ruling was limited to § 777A charges which require proof of a showing of the element of sex offender status as an element of the criminal offense. Because the trial judge followed the bifurcation process approved by the Court, there was no legal error and the defendant's conviction was affirmed.[109]

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108. *Id.* at 478 (citing Getz v. State, 538 A.2d 726, 731 (Del. 1988)).

109. *Id.* at 479.

APPENDIX

DELAWARE SUPREME COURT 2012 CRIMINAL LAW OPINIONS

Acuri v. State, 49 A.3d 1177, 1179-80 (Del. 2012) (probable cause existed for search warrant affidavit based on information from past proven reliable informant that was confirmed by police and a drug dog alert on suspect's vehicle and outside of hotel room).

Arnold v. State, 49 A.3d 1180, 1184-86 (Del. 2012) (petitioner had the right to expungement of his juvenile record under 10 *Del. C*. § 1013 where his subsequent adult conviction was pardoned).

Bradley v. State, 51 A.2d 423, 432, 435 (Del. 2012) (affidavit of probable cause to search doctor's property supported a reasonable inference that patient files, documentary or photographic, could be found in a white outbuilding B; police did not exceed the scope of the warrant in searching building B for individual files on computers and related equipment).

Brooks v. State, 40 A.3d 346, 350 (Del. 2012) (trial judge was required to give a modified *Bland* instruction when a self-identified accomplice testifies at trial).

Brown v. State, 36 A.3d 321, 325-26 (Del. 2012) (Family Court lacked jurisdiction to sentence seventeen year old defendant to a period of adult probation after a twelve month sentence at Glen Mills).

Brown v. State, 49 A.3d 1158, 1160-61 (Del. 2012) (trial judge's supplement to jury instructions on delivery of drugs which was based on a portion of the defendant's testimony was a correct statement of the substantive law).

Collins v. State, 56 A.3d 1012, 1015 (Del. 2012) (testimony of turncoat witnesses was properly admitted under § 3507; trial court did not err in giving *Allen* charge where jury had deliberated for eleven hours in complex, circumstantial case, and had indicated they were deadlocked).

Damiani-Melendez v. State, 55 A.3d 357, 360 (Del. 2012) (police officers' overview testimony about defendant's pattern of multiple robberies was proper to highlight similarities in the offenses).

Davis v. State, 38 A.3d 278, 281 (Del. 2012) (trial court properly denied untimely suppression motion where counsel failed to demonstrate exceptional circumstances for the delay).

DiDomenicis v. State, 49 A.3d 1153, 1157 (Del. 2012) (prosecutor's improper comments in opening statement did not deprive defendant of a fair trial).

Drummond v. State, 51 A.3d 436, 440 (Del. 2012) (admission of defendant's testimony from first trial while unrepresented at second trial was at most a harmless error).

Drummond v. State, 56 A.3d 1038, 1040-41 (Del. 2012) (trial court was required to sever defendant's Unlawful Conduct Against a Child by a Sex Offender charge from Rape charge based on decision in *Monceaux v. State*).

French v. State, 38 A.3d 289, 290 (Del. 2012) (defendant's conviction for Possession of a Deadly Weapon by a Person Prohibited was a violent felony for purposes of sentencing under the habitual offender statute).

Griffin v. State, 47 A.3d 487, 491 (Del. 2012) (defendant's constitutional right to bear arms authorized his carrying of a concealed knife in his house).

Hunter v. State, 55 A.3d 360, 364-68 (Del. 2012) (hospital BAC test result was inadmissible because phlebotomist failed to follow manufacturer's specification for the taking of the sample).

Kirkley v. State, 41 A.3d 372, 377-78 (Del. 2012) (prosecutor committed improper vouching in rebuttal argument by stating that State brought attempted robbery charge because that is what defendant did).

Kostyshyn v. State, 51 A.3d 416, 419-20 (Del. 2012) (defendant forfeited his right to counsel due to his abusive behavior toward his court-appointed attorney).

Monceax v. State, 51 A.3d 474, 478-79 (Del. 2012) (trial court properly held a separate trial on defendant's charge of Sex Offender Unlawful Conduct Against a Child after defendant had been convicted by a jury on a charge of Unlawful Sexual Contact in the Second Degree).

Mott v. State, 49 A.3d 1186, 1190-91 (Del. 2012) (trial judge did not err at restitution hearing in excluding evidence of a loan of $20,000 made by defendant to victim of Construction Fraud).

Murray v. State, 45 A.3d 670, 678 (Del. 2012) (police lacked authority to continue to detain occupants of a car for the purpose of asking questions when there was no reasonable suspicion of criminal behavior).

Panuski v. State, 41 A.3d 416, 420-21 (Del. 2012) (defendant's due process challenges to his conviction for two counts of Dealing in Child Pornography were barred under Rule 61(i)(3) as defendant admitted his guilt by way of plea).

Powell v. State, 49 A.3d 1090, 1097-99, 1100, 1101-04 (Del. 2012) (trial court properly denied defense motion for change of venue; trial court did not err in denying defense request for lesser-included negligence instruction where no evidence supported the defendant's accident theory; State did not commit *Deberry* violation in failing to collect shirt of other occupant of vehicle; imposition of death penalty did not violate the Eighth Amendment).

Richardson v. State, 43 A.3d 906, 909-11 (Del. 2012) (trial court erred in allowing Child Advocacy Center interviewer to opine on truthfulness of a § 3507 statement and on the reliability of the interview protocol used to obtain the statement).

Robertson v. State, 41 A.3d 406, 409-10 (Del. 2012) (sufficient evidence supported flight instruction which did not violate Del. Const. art. IV § 19).

Rose v. State, 51 A.3d 479, 481-84 (Del. 2012) (defendant's conviction for Maintaining a Dwelling for Keeping Controlled Substances was supported by sufficient evidence including cocaine from back of the house and in vestibule, and digital scale, empty smaller bags, a cutting agent, and surveillance equipment).

Roy v. State, 62 A.3d 1183, 1187-90 (Del. 2012) (although police lacked reasonable suspicion to stop defendant, the stop and seizure evidence was admissible under the inevitable discovery doctrine as defendant was the only person present when police discovered murder victim's body).

Small v. State, 51 A.3d 452, 459-63 (Del. 2012) (prosecutor's references to defendant's mitigating circumstances as excuses during penalty hearing constituted reversible error requiring remand for new penalty hearing).

Stafford v. State, 59 A.3d 1223, 1229-31 (Del. 2012) (police had probable cause to arrest passenger in vehicle who provided false information and could handcuff and pat down the suspect).

State v. Abel, C.A. No. 68 A.3d 1228, 1238-239(Del. 2012) (police lacked reasonable suspicion to further detain and frisk biker wearing motorcycle gang colors who was stopped for speeding).

Wallace v. State, 62 A.3d 1192, 1196-98 (Del. 2012) (codefendant's minor son implicitly consented to search of house by probation officer who had reasonable suspicion of probation violation by defendant).

Wheeler v. State, 36 A.3d 310, 314, 317, 321 (Del. 2012) (witness statement naming shooter made immediately after the event qualified as a present sense impression and excited utterance; detective's testimony that witness did not identify any other suspect was impermissible indirect hearsay that violated the Sixth Amendment although error was harmless).

Williams v. State, 56 A.3d 1053, 1056 (Del. 2012) (defendant's right to self-representation denied by trial court's failure to conduct a proper waiver colloquy).