# CRIMINAL LAW: 2008 DELAWARE SUPREME COURT DECISIONS

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This article reviews and summarizes some of the fifty-five criminal law opinions issued by the Delaware Supreme Court in 2008, a substantial increase over the thirty-seven criminal law opinions in 2007. The article addresses the court's search and seizure decisions, trial evidentiary decisions, and decisions of significance or issues of first impression.

## I. SEARCH AND SEIZURE DECISIONS

### A. Community Caretaking Doctrine—*Williams v. State*

In *Williams v. State*,[1] the court held that a police officer's initial encounter with a person walking on a highway in the early morning hours of a cold day was not a seizure, and the stop of the individual was reasonable under the community caretaker doctrine.[2]

The defendant Williams was walking along the median of Route 113, Georgetown at 3:50 a.m. when he was observed by Corporal Brittingham of the Georgetown Police Department. The weather was cold and windy and the officer pulled up around ten feet behind Williams before activating his strobe light. Corporal Brittingham asked Williams if he wanted a ride and the defendant, declining the ride, stated that his car broke down and he was walking to a nearby gas station to be picked up by his mother. The officer did ask Williams for his name and date of birth as a matter of routine. After obtaining that information, the officer checked the information and learned that Williams had outstanding arrest warrants for unpaid traffic fines. The officer approached Williams a second time and asked if he knew the reason for the contact. Williams admitted that he had outstanding warrants, and upon further inquiry, further admitted to possession of a concealed handgun. The defendant was charged and convicted on the crime of Carrying a Concealed Deadly Weapon.[3]

In his appeal, Williams challenged the decision of the Superior Court which denied his motion to suppress the fruit of the claimed unlawful stop.[4] The court reviewed the question under the protections against illegal searches and seizures under the Delaware Constitution[5] and considered whether "a reasonable person would have believed he or she was not free to ignore the police presence."[6] Even under this standard which is more stringent than federal precedent,

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1. 962 A.2d 210 (Del. 2008).

2. *Id.* at 216-22.

3. *Id.* at 213.

4. *Id.*

5. Del. Const. Art. I, § 6.

6. *Williams,* 962 A.2d at 215 (citing Michigan v. Chesternut, 486 U.S. 567, 573 (1988); Jones v. State, 745 A.2d 856, 862 (Del. 1999)). The court noted that as a matter of Delaware constitutional law, the applicable standard for reviewing the legality of a seizure is the *Michigan v. Chesternut* decision. The Delaware law follows *Chesternut*, and not the subsequent decision modifying

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the court noted that police may initiate contact with citizens to ask questions and this type of encounter if consensual is not a seizure for Fourth Amendment purposes.[7] In Wright's case, the court ruled that the defendant was not seized as a result of the initial contact with the police officer.[8] The court found the encounter to be brief and noted that Williams voluntarily answered the officer's questions.[9] In the court's view, the brief encounter lacked the physical force or submission to authority to constitute a seizure.[10]

The court next ruled that, even if the defendant was seized, the initial encounter was reasonable and valid under the "community caretaker" or "public safety" doctrine.[11] Tracing the community caretaker role of police to *Terry v. Ohio,*[12] the court found that the majority of jurisdictions that have considered the issue have adopted the community caretaker doctrine.[13] The court relied on these surrounding jurisdictions and adopted the community caretaker function of police in Delaware.[14] The court stated that the "role of police in Delaware is not limited to merely the detection and prevention of criminal activity, but also encompasses a non-investigatory, non-criminal role to ensure the safety and welfare of our citizens."[15]

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federal law in *California v. Hodari D.*, 499 U.S. 621 (1991) (U.S. Supreme Court read *Chesternut* more closely to require some "physical force or submission to the assertion of authority").

7. *Williams,* 962 A.2d at 215 (citing Muehler v. Mena, 544 U.S. 93, 101 (2005); Royer v. State, 460 U.S. 491, 497-98 (1983); Lopez-Vazquez v. State, 956 A.2d 1280, 1286 n.5 (Del. 2008); Ross v. State, 925 A.2d 489, 494 (Del. 2007)).

8. *Williams*, 962 A.2d at 216.

9. *Id.*

10. *Id.* The court did not review the propriety of the encounter under Del. Code Ann. tit. 11, § 1902 which was not implicated because the police did not "demand" the defendant's name. The court noted that § 1902 codifies the reasonable suspicion standard for investigatory stops. *Id.* at 216 n.19 (citing Harris v. State, 806 A.2d 119, 126 n.20 (Del. 2002)).

11. *Williams,* 962 A.2d at 221.

12. 392 U.S. 1 (1968).

13. *Williams*, 962 A.2d at 217 (citing Terry, 392 U.S. at 13 ("[s]treet encounters between citizens and police officers are incredibly rich in diversity.… Encounters are initiated by the police for a wide variety of purposes, some of which are wholly unrelated to a desire to prosecute for crime."); Cady v. Dombrowski, 413 U.S. 433, 441 (1973) ("[l]ocal police officers … frequently … engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute")).

14. *Williams*, 962 A.2d at 217-18 (citing Duck v. Alabama, 518 So. 2d 857, 859-60 (Ala. Crim. App. 1987); Crauthers v. Alaska, 727 P.2d 9, 10-11 (Alaska Ct. App. 1986); State v. Enos, 2003 WL 549212, at *4 (Del. Super. Feb. 26, 2003); Illinois v. Luedemann, 857 N.E.2d 187, 197 (Ill. 2006); Massachusetts v. Evans, 764 N.E.2d 841, 843 (Mass. 2002); Maine v. Pinkham, 565 A.2d 318, 319 (Me. 1989); Kozak v. Comm'r Pub. Safety, 359 N.W.2d 625, 628 (Minn. Ct. App. 1984); Montana v. Lovegren, 51 P.3d 471 (Mont. 2002); New Jersey v. Martinez, 615 A.2d 279, 281 (N.J. App. Div. 1992); Vermont v. Marcello, 599 A.2d 357, 358 (Vt. 1991); Barrett v. Virginia, 447 S.E.2d 243, 246 (Va. Ct. App. 1994), rev'd, 462 S.E.2d 109 (Va. 1995); Washington v. Acrey, 64 P.3d 594, 599 (Wash. 2003); Bies v. Wisconsin, 251 N.W.2d 461, 471 (Wis. 1977); Wilson v. Wyoming, 874 P.2d 215 (Wyo. 1994)).

15. *Williams,* 962 A.2d at 218. The court further stated that evidence found incident to the officer's discharge of the community caretaking function can be seized and need not be ignored. *Id.* at 218 n.31 (citing *Cady, supra*, 413 U.S. at 447-48; 3 Wayne R. LeFave, Search And Seizure § 5.4(c) (4th ed. 2004)).

In defining the community caretaking doctrine, the court noted the need to balance the doctrine against the constitutional protections against illegal searches and seizures. In doing so, the court adopted Montana's three-part test to set forth the scope of the newly recognized doctrine:

> First, as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, then that officer has the right to stop and investigate. Second, if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril. Third, once, however, the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating … the protections provided by the Fourth Amendment, but more importantly, those greater guarantees afforded under [state law].[16]

The court declared that a police officer's limited request for information is reasonable under the community caretaking doctrine because it allows the officer to maintain a record of his contact with the individual.[17] The officer who contacted Wright was aware of the early morning hour and weather conditions which both were objective, specific facts suggesting that the defendant was in need of assistance. The officer did take appropriate steps to assist Wright by stopping his car a short distance from him and asking if help was needed. There was a brief exchange during which Williams declined assistance and volunteered his name and date of birth.[18] The officer acted reasonably in requesting this background information so he could make an administrative record of the encounter.[19] The officer also concluded the contact by advising Wright that he could contact the officer if he did need further assistance.[20] In conclusion, the court ruled that the officer acted pursuant to the community caretaking doctrine and the initial encounter was not a Fourth Amendment seizure.[21] The defendant's conviction was affirmed.[22]

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16. *Williams,* 962 A.2d at 219 (quoting Lovegren, supra, 51 P.3d at 75-76).

17. *Williams*, 962 A.2d at 221 (citing Evans, 764 N.E.2d at 843; New Hampshire v. Brunelle, 766 A.2d 272, 274 (N.H. 2000)). The court did not find that the officer's questions to Wright violated DEL. CODE ANN. tit. 11, § 1902. The court noted that § 1902 is based on the Uniform Arrest Act ("UAA"). Several jurisdictions have recognized the community caretaker doctrine and the provisions of the UAA. The court found that no other jurisdiction has interpreted the UAA to limit the ability of police under the community caretaker doctrine to identify a person who has been offered a*id.* Williams, 962 A.2d at 220 & n.38 (citing and comparing ARK. CRIM. PROC. R. 2.2 & Allen v. Arkansas, 1997 WL 86362 (Ark. Ct. App. Feb. 26, 1997); KAN. CRIM. PROC. CODE ANN. § 22-2402 & Kansas v. Gonzales, 141 P.3d 501 (Kan. Ct. App. 2006); MASS. GEN. LAWS ANN. Ch. 41 § 98 & Massachusetts v. Evans, 764 N.E.2d 841 (Mass. 2002); MONT. CODE ANN. § 46-50-401 & Montana v. Lovegren, 51 P.3d 471 (Mont. 2002); N.H. REV. STATE. ANN. § 594:2 & New Hampshire v. Brunelle, 766 A.2d 272 (N.H. 2000); R.I. GEN. LAWS § 12-7-1 & Rhode Island v. Lombardi, 727 A.2d 670 (R.I. 1999)).

18. *Williams*, 962 A.2d at 221.

19. *Id.*

20. *Id.* at 221-22.

21. *Id.* at 222.

22. *Id.*

## B. Emergency Doctrine Exception—*Blake v. State*

In *Blake v. State,*[23] the court ruled that exigent circumstances, including the blood curdling screaming of a baby after a loud boom sound from the dwelling, justified the police officers' warrantless entry into the defendant's apartment.[24]

In *Blake*, the defendant had appealed the trial court's denial of his motion to suppress evidence seized from the warrantless entry into his apartment. The defendant had been identified by New York Police Department ("NYPD") detectives as the suspect in a Manhattan shooting in which three people were shot. NYPD and Wilmington Police ("WPD") had located the defendant's residence as a second floor apartment in a Wilmington apartment building. NYPD detectives and a uniformed WPD officer went to the location to apprehend the defendant. While several officers knocked on the front door, other officers covered the outside of the building. The officers at the front door heard movement inside along with the muffled cry of a baby. After knocking for twenty to thirty minutes, detectives from WPD and NYPD left to obtain a search warrant. A NYPD officer at the scene observed an individual, later identified as Blake, open a window in the apartment and point a handgun at the officers while challenging them to shoot him. The outside NYPD officer then saw Blake crash through the apartment window in an escape attempt. The officers at the front door heard the crash of the window breaking followed by a "boom," and then the baby's crying turning into "blood curdling" screaming. The officers, concerned for the safety of the infant, forcibly entered the apartment and saw the infant on the floor. A safety sweep of the premises led to identification of a small amount of crack cocaine and drug paraphernalia. The trial judge ruled that the emergency entry was authorized under *Guererri v. State*[25] and denied the motion to suppress.[26]

On appeal, Blake argued that the trial court misapplied the three part test established in *Guererri*. Under *Guererri*, the court noted that the State's burden was to prove:

> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property[;] (2) The search must not be primarily motivated by intent to arrest and seize evidence [;and] (3) There must be some reasonable basis approximating probable cause, to associate the emergency with the area or place to be searched.[27]

On the first prong, the trial court found that the police had announced their presence and tried knocking on the door of the apartment for a considerable time. The police had also heard the muffled cry of an infant along with footsteps that approached and then retreated from the front door. The trial judge's finding that the police had reasonable grounds to check on the baby was found not to be clearly erroneous.[28]

The court also upheld the trial judge's determination under the second prong that the police detectives entered in response to the "blood-curdling screams from a baby" and not in an attempt to arrest or seize evidence. The court noted

23. 954 A.2d 315 (Del. 2008).

24. *Id.* at 318-19.

25. 922 A.2d 403 (Del. 2007).

26. *Blake,* 954 A.2d at 316-17.

27. *Id.* (citing *Guererri*, 922 A.2d at 406).

28. *Id.* at 318.

the duty of the police to conduct the search for the primary purpose of a community caretaking function.[29] In Blake's case, the officer's actions were directed at protecting the infant in the house whose screams had gone from ordinary to "blood-curdling."[30]

On the third factor, the trial judge had ruled that emergency required the police entry to check on the screaming infant and also ruled that the police could conduct a protective sweep of the premises to ensure there was no further danger. The court found this was exactly what the police did upon entry into the apartment and there was no error in the analysis by the trial court.[31]

The court concluded that the trial judge had properly applied the emergency doctrine as set forth in *Guererri* and the motion to suppress was properly denied.[32]

## C. Absence of Probable Cause for Stop Based on Four Corners of Arrest Warrant—*McDonald v. State*

In *McDonald v. State,*[33] the court held that the "four corners" of an arrest warrant did not set forth probable cause for a traffic stop by an officer of a vehicle leaving private property that failed to use a turn signal.[34]

Defendant McDonald was a passenger in a vehicle stopped by a Delaware State Police Corporal who pulled over the vehicle after it had exited from the parking lot of a Shore Stop. The corporal had observed the vehicle at approximately 12:15 a.m. in the parking lot with a driver and passenger in the car. The officer ran the tag on the car but inadvertently transposed some of the digits which incorrectly caused the vehicle to be reported as unregistered. The officer observed that the driver failed to activate his turn signal as he made a right turn to enter the public road. The corporal activated his emergency equipment to stop the car for failing to use the turn signal. Based on events subsequent to the stop, both occupants of the vehicle were transported back to the police station. The officer later filed an arrest warrant with the Justice of the Peace Court which contained in part a description of the reason for the original stop. In the arrest warrant, the corporal stated that he stopped the vehicle due to the perceived failure to turn violation.[35]

The Supreme Court reviewed the decision of the trial court that denied the motion to suppress evidence obtained subsequent to the stop of the vehicle.[36] The court focused on the four corners of the arrest warrant to determine whether

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29. *Id.* & n.4 (citing *Guererri*, 922 A.2d at 407; Cady v. Dombrowski, 413 U.S. 433, 441 (1973) ("[l]ocal police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions…."); Virginia v. Waters, 456 527, 530 (Va. Ct. App. 1995)).

30. *Blake*, 954 A.2d at 318.

31. *Id.* at 318-19.

32. *Id.* at 319.

33. 947 A.2d 1073 (Del. 2008).

34. *Id.* at 1079-80.

35. *Id.* at 1075-76.

36. *Id.* at 1076-77.

probable cause existed for the vehicle stop.[37] The court viewed the arrest warrant as contemporaneous evidence that was probative on the issue for the corporal's reason for the stop.[38] In the affidavit, the officer only cited the driver's failure to signal a right hand turn when leaving the private lot as the basis for the vehicle stop.[39] The court found that the officer could not have probable cause to believe the driver violated DEL. CODE ANN. tit. 21, § 4155.[40] The provisions of DEL. CODE ANN. tit. 21, Ch. 41 were applicable only to public highways, not to vehicles exiting from private parking lots.[41] The court also noted that the parking lot was only 200 feet in total, which made it impossible for the driver to comply with the requirement of § 4155 to signal not less than 300 feet prior to the intended turning point.[42] In the court's view, there was no factual basis to establish that the officer properly stopped the vehicle for a § 4155 turn signal violation.[43] The court concluded that the police officer's subsequent search of the occupants and seizure of drug evidence from the vehicle were inadmissible as the original stop was unreasonable, and reversed the judgment of the trial court.[44]

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37. *Id.* at 1078. The arrest warrant was issued for nine criminal offenses that were the result of drugs seized from the vehicle during a search. *Id.*

38. *Id.*

39. *Id.* at 1078-79.

40. *Id.* at 1079 (citing DEL. CODE ANN. tit. 21, § 4155). Section 4155 provides:

> § 4155 Turning movements and required signals.
>
> (a) No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in § 4152 of this title, or turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway or turn so as to proceed in an opposite direction unless and until such movement can be made with safety without interfering with other traffic. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.
>
> (b) A signal of intention to turn or move right or left when required shall be given continuously during not less than the last 300 feet or more than one-half mile traveled by the vehicle before turning.

DEL. CODE ANN. tit. 21, § 4155.

41. *McDonald*, 947 A.2d at 1079.

42. *Id.*

43. *Id.*

44. *Id.* at 1079-1080. In a dissenting opinion, Justice Berger noted that it was unclear from the record that the officer only stopped the vehicle because of the perceived turn signal violation. In his testimony at the suppression hearing, the officer had also referred to the perceived registration violation and that he had removed the tag from the car as evidence. *Id.* In another dissenting opinion, Vice Chancellor Noble, joined by Justice Berger, declared that the vehicle stop was reasonable under the Fourth Amendment and the evidence subsequently seized should not be suppressed. *Id.* at 1081-86. The dissent noted the officer had probable cause to believe the vehicle was not properly registered and his good faith mistake of fact was not a basis for a Fourth Amendment violation. *Id.* at 1081-82.

## II. TRIAL EVIDENCE DECISIONS

### A. Circumstantial Evidence to Prove *Corpus Delicti* of Drug Offenses—*Wright v. State*

In *Wright v. State,*[45] the court held that the defendant could be convicted of delivery of cocaine based on his own confession and the testimony of his uncharged co-conspirator who independently proved that Wright sold cocaine.[46]

The New Castle County police arrested defendant Wright on two counts of delivery. As part of an investigation, the police had previously arrested Raheem Cannon on charges of possession with intent to deliver cocaine and other drug offenses in June, 2006. On July 13, 2006, Cannon came to the police station and admitted to selling cocaine to the defendant on two different occasions on the evening of July 8, 2006. Cannon admitted to selling cocaine on a daily basis for two years and stated that Wright was a regular customer every other week for over a year. On the date in issue, Cannon advised police that his business was slow and he called Wright for a potential sale. Wright called back after some time and requested 1.6 grams of cocaine. Cannon bagged the cocaine and delivered it to Wright in the parking lot of a local bar. Cannon described the substance as cocaine based on his experience with the texture and smell of the drugs. Cannon left after receiving payment of $100 and returned to a social gathering. Wright then called Cannon and requested another $80 to $100 worth of cocaine. Cannon subsequently delivered the drugs to Wright in the presence of another unknown person. The police never recovered any of the cocaine but did question the defendant on the transactions. Wright admitted that he had purchased cocaine from Cannon two times on the night of July 8, 2006 and confessed to delivering the drugs to others. Wright denied that the drugs were for personal use.[47]

At trial, Cannon received immunity and testified at trial to the cocaine sales to Wright. The trial court denied the defense motion for acquittal claiming that the State had failed to establish the *corpus delicti* for the two delivery offenses. Wright was convicted of both offenses and appealed.[48]

As an initial matter, the court noted that the defendant's case would be reviewed under the "trustworthiness" approach to the *corpus delicti* rule established in *DeJesus v. State*.[49] The provisions of DEL. CODE ANN. tit. 11, § 301(c), which revised the Delaware common law rule of *corpus delicti*, only applied to compound crimes which were not present in Wright's case.[50] Under the rule in *DeJesus,* the court ruled that the State must present "some evidence of the existence of a crime, independent of the *defendant's* confession, to support a conviction."[51] While noting that the quantum of inde-

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45. 953 A.2d 188 (Del. 2008).

46. *Id.* at 190.

47. *Id.* at 190-91.

48. *Id.* at 191.

49. *Id.* at 192 (citing *DeJesus*, 655 A.2d 1180, 1199-1202 (Del. 1995)). The court noted that the progeny of the *DeJesus* "trustworthiness" analysis consisted of three decisions which ruled that "the Delaware *corpus delicti* rule requires the prosecution to show some evidence of the crime apart from the defendant's confession." *Id.* at 192 n.11 (citing Bailey v. State, No. 7, 2006, 2007 WL 1041748, at *2-3 (Del. Apr. 9, 2007); Rogers v. State, No. 247, 2004, 2004 WL 2830898, at *1 (Del. Nov. 30, 2004); Barlow v. State, No. 565, 2003, 2004 WL 1874699, at *3 (Del. Aug. 17, 2004); citing Superior Court authority in State v. Wells, 2004 WL 15551515 (Del. Super. June 16, 2004); State v. Bright, 1998 WL 283391 (Del. Super. Feb. 4, 1998)).

50. *Wright*, 953 A.2d at 191-92 (citing DEL. CODE ANN. tit. 11, § 301(c); 70 Del. Laws 463, S.B. 256 (1995)).

51. *Wright*, 953 A.2d at 192 (quoting Bright v. State, 490 A.2d 564, 569 (Del. 1985) (emphasis added); citing *DeJesus*, 655 A.2d at 1202; Jenkins v. State, 401 A.2d 83, 86 (Del. 1979)).

pendent evidence was not precisely defined, the court stated that the standard of review was the same as for a challenge to the sufficiency of the evidence.[52]

On the elements of the delivery charges, the court noted that the State was required to prove that the defendant delivered or possessed cocaine with the intent to deliver.[53] The court found that Cannon's testimony about the details of the two cocaine deliveries established the *corpus delicti* of the "delivery" element.[54] The second element concerned proof that the substance, which was never recovered, was cocaine. At trial, the State had relied on Cannon's lay witness testimony about the appearance and texture of the substances to prove he delivered cocaine to Wright.[55] The court noted that a number of state and federal courts have allowed the use of lay opinion testimony from someone experienced with drugs to establish the identification of drugs.[56] The court adopted the approach taken by these other jurisdictions and held that "[a] lay witness with familiarity and experience with the drug in question may testify and establish a drug's identity by factors other than the witness's personal use."[57] Under this rule, the testimony of Cannon was sufficient independent evidence to establish that the substance was cocaine and met the *corpus delicti* rule.[58] The court concluded that, viewing the evidence in the light most favorable to the State, there was sufficient evidence to support the defendant's convictions.[59]

## B. Mapquest Printouts of Distance and Driving Time Were Not Admissible Under Rule 803(17) as Published Compilations—*Jianniney v. State*

In *Jianniney v. State*,[60] the court held that the State's use of Mapquest printouts to prove distances and driving times was not admissible under the hearsay exception in Rule 803(17) for "published compilations, generally used and relied upon by the public or by persons in particular occupations."[61]

The defendant Jianniney was charged with sexual solicitation of a child. The State alleged that on February 28, 2006, around 11:30 a.m., a man later identified as the defendant approached a thirteen year old boy who was working

52. *Wright*, 953 A.2d at 192-93.

53. *Id.* at 193.

54. *Id.* at 193-94.

55. *Id.* at 194.

56. *Id.* at 194-95 (citing United States v. Dominguez, 992 F.2d 678, 681 (7th Cir. 1993); United States v. Westbrook, 896 F.2d 330, 336 (8th Cir. 1990); United States v. Palva, 892 F.2d 148, 157 (1st Cir. 1989); Gooch v. Georgia, 549 S.E.2d 724 (Ga. Ct. App. 2001); Smalley v. Indiana, 732 N.E.2d 1231, 1235 (Ind. Ct. App. 2000); Clifton v. Indiana, 499 N.E.2d 256, 258 (Ind. 1986); Reynolds/Herr v. Indiana, 582 N.E.2d 833, 840 (Ind. Ct. App. 1991)).

57. *Wright*, 953 A.2d at 195.

58. *Id.*

59. *Id.* The court declined to consider the defense argument that Wright should have been barred from testifying in the form of an opinion since he was never offered as an expert. The issue had not been raised before the trial court and the court would not consider the issue pursuant to Supreme Court Rule 8. *Id.*

60. 962 A.2d 229 (Del. 2008).

61. *Id.* at 231.

outside his house in Glasgow Pines, Delaware. The suspect began to talk to the boy who did not respond and went into his house. Around 6:00 p.m. on the same day, the boy was taking out the trash to the front curb when the same man again contacted the victim and offered him $40 if he would show his penis. The boy immediately ran into the house and called his mother who returned home to attempt to locate the suspect.[62]

At trial, Jianniney claimed that he was working on the day in issue for Wilson Fuel Services in Elkton, Maryland and was making deliveries all day. The work records showed that the defendant started his shift at 7:59 a.m. and made eight deliveries before lunch. He later went out on afternoon deliveries and returned to his house for dinner by 5:15 p.m. Two witnesses at trial testified that they saw the defendant on the street where the victim lived at 6:00 p.m. The defendant's employer Wilson also testified about Jianniney's work schedule and provided estimates of the driving time from the locations on the assigned stops. The employer stated that Jianniney would not have had enough time to be home by 11:30 a.m. On cross-examination, Wilson admitted that he was familiar with Mapquest and had previously used the website to calculate driving distances. The trial court permitted the State to admit a number of Mapquest printouts of driving directions and driving times which, for some of the routes, calculated driving times that were ½ of the time estimated by Wilson. The defendant was convicted as charged at trial.[63]

On appeal, the court reviewed the sole issue of the admission of the Mapquest printouts at trial. The court noted the hearsay exception in Rule 803(17) for market reports and commercial publications.[64] The court stated that the trial court could likely have taken judicial notice of the Mapquest printouts for the limited issue of identified streets, driving routes, and driving distances.[65] Courts in Delaware and other jurisdictions have taken judicial notice of such information.[66] The issue with the Mapquest printouts used at trial was that the information was admitted for the truth of the calculated driving time estimates.[67] There was no admitted evidence that these driving time estimates are relied upon by the public or professional drivers.[68] The court also noted the Mapquest website has a specific disclaimer regarding the accuracy of its information that provides:

> THIS WEBSITE AND THE MATERIALS ARE PROVIDED WITH ALL FAULTS ON AN "AS IS" AND "AS AVAILABLE" BASIS. MAPQUEST, ITS LICENSORS AND OTHER SUPPLIERS

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62. *Id.* at 230.

63. *Id.*

64. *Id.* at 232 (citing D.R.E. 803(17) (Market reports; commercial publications. Market quotations, tabulations, lists, directories or other published compilations, generally used by the public or persons in particular occupations)).

65. *Id.* (citing D.R.E. 201(b) (judicial notice may be taken of facts "not subject to reasonable dispute [because they are] either (1) generally known … or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.")).

66. *Id.* & n.6 (citing United States v. Kelly, 535 F.3d 1229, 1237 (10th Cir. 2008); Saco v. Tug Tucana Corp., 483 F. Supp. 2d 88, 93 (D. Mass. 2007); Gordon v. Lewistown Hospital, 272 F. Supp. 2d 393, 429 (M.D. Pa. 2003); Coppola v. Ferreligas, Inc., 250 F.R.D. 195, 199 (E.D. Pa. 2008); Caithness Resources, Inc. v. Ozdemir, 2000 WL 1741941, at *3 (Del. Ch. Nov. 22, 2000); S.H. v. G.W., 2007 WL 3202484 (Del. Fam. Ct. 2007)).

67. *Jianniney*, 962 A.2d at 232.

68. *Id.*

> DISCLAIM ALL WARRANTIES … INCLUDING THE WARRANTIES THAT THE WEBSITE AND MATERIALS ARE FREE FROM DEFECTS….
>
> Please note that the Materials may include technical inaccuracies or typographical errors. In addition, you may find that weather, construction projects, traffic conditions, or other events may cause road conditions to differ from the listed results.[69]

On this record, the court concluded that the Mapquest driving distance estimates were not admissible under Rule 803(17).[70] The court next ruled that the admission of the evidence was harmless error.[71] The court indicated that the driving estimates were not particularly persuasive, and only addressed the issue of whether the defendant could have been in the victim's neighborhood by 11:30 a.m. In addition, an impartial witness placed the defendant on the victim's street at the time of the charged offense. The court found the evidence to be only minimally prejudicial and affirmed the conviction.[72]

### C. Use of Videotaped Statements by Jury in Deliberations—*Waterman v. State*

In *Waterman v. State,*[73] the court held that the trial court committed harmless error in departing from the *Flonnory v. State*[74] default rule by allowing the videotaped statement of child victim to go to the jury during deliberations.[75]

The defendant Waterman was tried and convicted on multiple counts of rape and related offenses. The victim and her siblings regularly visited a farm where the defendant lived with his step-grandmother. When the victim was eight, she was sexually abused by the defendant whom she knew as "Uncle Brian." She reported the assaults to her mother over a year later and then began to keep a journal at her mother's suggestion. The Children's Advocacy Center worker taped an interview with the victim and retained four pages of the journal which was later turned over to police. During a police interview, the defendant denied any improper contact with the victim despite the detective's representations that the victim was telling the truth and her account could not have been made up by an eight-year old. At trial, the jury saw the victim's videotaped statement but the court indicated that the tape would not be sent to the jury room for deliberations. The defendant's statement was played as well for the jury. The trial judge at the close of the case permitted the jury to access the victim's videotape during deliberations.[76]

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69. *Id.*

70. *Id.*

71. *Id.* at 232-33.

72. *Id.* at 233.

73. 956 A.2d 1261 (Del. 2008).

74. 893 A.2d 507 (Del. 2008).

75. *Waterman*, 956 A.2d at 1262.

76. *Id.* at 1262-63.

On appeal, the defendant first claimed that the jury should not have been allowed to view the four pages from the victim's journal because the other pages were not made available. The evidence at trial was that the victim either misplaced or destroyed the remainder of the journal. The court noted that there was no basis to find that the lost portion of the journal contradicted any of the four pages introduced at trial. In addition, the court stated that the defendant was able to question the victim and two child care supervisors who had knowledge of the entire contents of the journal.[77]

On a second issue, the court reviewed the trial court's decision to allow the victim's videotaped statement to be sent to the jury room.[78] The court noted the *Flonnory* default rule that "written or tape or video recorded § 3507 statements should *not* be admitted into evidence as separate trial exhibits that go with the jury into the jury deliberations."[79] In this trial, the judge had initially ruled that the victim's videotaped statement would not be sent to the jury room during deliberations. The trial court then reversed itself due to concerns over parts of the defendant's taped statement which contained inadmissible comments by the police detective during the interrogation. The trial court gave a cautionary instruction to the jury regarding the inadmissible comments by the officer on the defendant's taped statement, but the tape was never redacted. The trial judge ultimately decided to allow the victim's taped statement to go to the jury as a separate exhibit based on concerns about the inadmissible statements on the defendant's tape.[80]

The court ruled that the concerns of the trial court did not justify departure from the "default" rule.[81] Under *Flonnory*, the tape could only be sent to the jury if it was either requested by the jury or if both parties consented.[82] The trial court's concerns about the defendant's statement could have been addressed by redaction of the tape prior to it being played to the jury. Since the defendant did object to the use of the victim's taped statement during jury deliberations, the court ruled that the trial court abused its discretion in departing from the default rule. [83]

The court then proceeded to find the trial court's ruling to be harmless error.[84] The victim gave credible testimony that was detailed and unequivocal. The case was not close and even if the jury had reviewed the tape during deliberations, it was likely that the evidence from the short trial would still have been fresh. The court ruled there was no violation of the defendant's fair trial right.[85]

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77. *Id.* at 1263.

78. *Id.*

79. *Id.* at 1263-64 (quoting *Flonnory*, 893 A.2d at 526-27).

80. *Waterman*, 956 A.2d at 1264.

81. *Id.* at 1265.

82. *Id.*

83. *Id.*

84. *Id.* (citing Hawkins v. State, No. 257, 2005, 2006 WL 1932668, at *3 (Del. July 11, 2006)).

85. *Waterman*, 956 A.2d at 1265.

## III. OTHER SIGNIFICANT DECISIONS

### A. Special Accommodations for Child Witness—*Czech v. State*

In *Czech v. State,*[86] the court held that a special accommodation by the trial court to allow the mother to sit behind a testifying child complainant was harmless error as child's testimony had little probative value.[87]

The defendant Czech was convicted of three charges of rape committed against the five year old granddaughter of his girlfriend. The five-year old "Mary" and her three-year old sister stayed with their grandmother about one weekend every two months from January, 2004 through February, 2006. The defendant lived in the house with the children's grandmother. On March 12, 2006, the victim's mother observed her daughter who was sitting on the sofa moving her hands up and down in her pants. Mary stated that she hurt and that was why she was rubbing inside her pants. The mother asked if Mary had been touched inappropriately and after an initial denial, Mary stated that the defendant had touched her improperly every day. During a recorded interview with the Child Advocacy Center, Mary told a child abuse investigator that the defendant had also assaulted her eleven year old cousin "Ruth." The victim later gave a second recorded statement to the Child Advocacy Center about the alleged abuse by the defendant of her cousin Ruth.[88]

At trial, cousin Ruth testified and denied that the defendant had abused her or anyone else in the family. The victim was called to the stand but did not respond to questions. The prosecution then played the two prior recorded interviews for the jury. The defendant testified at trial and denied all improper contact with Mary.[89]

On appeal, Czech challenged the decision by the trial judge to allow the complaining witness' mother to sit behind her when she testified. After the mother had testified, the State requested that she remain in the courtroom while her daughter testified. The trial judge suggested that the mother remain on the witness stand and sit behind her daughter. The trial court then instructed the jury on the special accommodation provided to the child witness.[90]

The Supreme Court reviewed this issue of first impression in Delaware, namely whether an adult support person may sit in close proximity to a testifying child.[91] The court noted that other jurisdictions have addressed the issue and approved such special accommodations as long as procedural safeguards are used.[92] The range of procedural rules have included "a showing of substantial need",[93] proof of a "compelling need",[94] a cautionary instruction,[95] or permitting the

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86. 945 A.2d 1088 (Del. 2008).

87. *Id.* at 1095.

88. *Id.* at 1091-92.

89. *Id.* at 1092.

90. *Id.* at 1093-94. The trial judge instructed the jury that "[t]he testimony of Ms. Smith is complete and she is excused as a witness. However, the State has made a request that she be permitted to sit up here because her daughter is going to be called as a witness and I have granted the State's request." *Id.* at 1094.

91. *Id.* at 1093.

92. *Id.* (citing Connecticut v. Menzies, 603 A.2d 419 (Conn. Ct. App. 1992); New Jersey v. T.E., 775 A.2d 686, 697 (N.J. App. Div. 2001); North Carolina v. Reeves, 448 S.E.2d 802 (N.C. 1994)).

93. *T.E.*, 775 A.2d at 697.

94. *Menzies*, 603 A.2d at 429.

95. Mosby v. Texas, 703 S.W.2d 714 (Tex. App. 1985).

defense to suggest alternative procedures.[96] The court found that the trial judge committed error by *sua sponte* suggesting the special accommodation without performing a balancing analysis and applying procedural safeguards.[97] Absent extraordinary circumstances, the trial court should not implement special accommodations for child witnesses.[98] According to the court, a trial judge should only grant a special accommodation for a witness after a motion that demonstrates "substantial need" for the implementation.[99]

The court also found that the trial judge committed error in denying the defense request for a cautionary instruction.[100] In the court's view, a contemporaneous instruction explaining the purpose of the support person would have mitigated any impact of the accommodation on the jury.[101] The court did rule that any error by the trial judge in permitting the special accommodation was harmless in light of the lack of probative value in the child's testimony.[102] The complaining witness was ill when she testified and provided mostly one word answers that did not implicate the defendant. The State presented the substance of the child's testimony through her two videotaped statements. The court concluded that the child's testimony did little to help the State's case and any error regarding the special accommodation was harmless.[103]

In reviewing this issue, the court recognized the sensitive issues involved with the testimony of a child witness and noted the requirement under Delaware law that child witnesses be treated with "additional consideration."[104] While not questioning the propriety of a support person for a child witness, the court addressed the legal framework for a trial court to employ when addressing a motion for a special accommodation.[105] In so ruling, the court relied on New Jersey precedent which balanced the competing interests of the State, defense, and child witness.[106] The court adopted the following six factors to be considered in future cases by a trial judge presented with a motion for a special accommodation:

> (1) A preliminary showing must be made to establish a substantial need for the procedure. It must be demonstrated that without accompaniment, the child is likely to be substantially non-responsive,

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96. *T.E.*, 775 A.2d at 697.

97. *Czech*, 945 A.2d at 1094.

98. *Id.*

99. *Id.*

100. *Id.* at 1095.

101. *Id.*

102. *Id.*

103. *Id.* (citing Van Arsdall v. State, 524 A.2d 3, 11 (Del. 1987)).

104. *Id.* at 1096 (citing Del. Code Ann. tit. 11, § 5131).

105. *Czech*, 945 A.2d 1096.

106. *Id.* (citing T.E., 775 A.2d at 697-98).

> and that with accompaniment, the child is likely to provide meaningful, probative testimony. The court may consider the age of the witness, the nature of the testimony, evidence of fear, embarrassment or inability to testify, and the degree of trauma experienced by the witness in the underlying event and by the courtroom experience.
>
> (2) A defendant should be given the opportunity to suggest alternatives. [Examples deleted.]
>
> (3) Choice of the support person should minimize potential prejudice. A parent or other close relative will more likely be viewed as family support than vouching for the witness' credibility, as might result with a counselor, therapist or other professional. The advisability of identifying the status of a non-family support person should be considered. Whether the support person is also a witness in the trial should be considered; for example this might impact a sequestration order, and, depending upon the scope and extent of the support person's testimony, it might tend to unduly bolster the child's testimony. A representative of the prosecutor's office should not be used.
>
> (4) The logistics should only be as intrusive as necessary to accomplish the purpose of the procedure. Placing the support person in the front row of the gallery or at counsel table, for example, would be minimally intrusive. Permitting the support person to stand behind or sit alongside the witness is moderately intrusive. Contact, such as holding the child's hand or permitting the child to sit on the support person's lap is highly intrusive and should be considered only as a last resort. The view of the child by the defendant and the jury should not be obstructed.
>
> (5) A cautionary instruction should be given to the support person not to speak, prompt, communicate by signals or expression, and to give no indication of approval or disapproval of the answers.
>
> (6) An appropriate instruction should advise the jurors that the purpose of the support person is to attempt to place the child at ease while testifying and that the presence of the support person should not affect their assessment of the credibility of the child's testimony. The standard "passion, prejudice or sympathy" charge should also be given.[107]

The court found no error in the defendant's remaining claims of error and affirmed the convictions.[108]

## B. Defendant's Right to Speedy Sentencing—*Harris v. State*

In *Harris v. State,*[109] the court held that a delay of six and one-half years between the defendant's plea and his eventual sentence violated a defendant's right to speedy sentencing which the court continued to assume existed under the Sixth Amendment.[110]

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107. *Id.* (quoting *T.E.*, 775 A.2d at 697-98).

108. *Id.* at 1098-99. The defendant claimed that the trial court committed error by admitting the portion of Mary's videotaped statements that alleged the defendant also abused her cousin Ruth. The defendant failed to object to this evidence at trial and used this evidence to attack the victim's credibility. The court found the defendant had therefore waived any argument about the admissibility of the evidence. *Id.* at 1097-98. The court also rejected the defense argument that the prosecutor committed error by improperly vouching for the victim's credibility in closing arguments. The court found the statements were tied to the evidence and suggested a logical and proper inference from the evidence. *Id.* at 1098-99.

109. 956 A.2d 1273 (Del. 2008).

110. *Id.* at 1274.

The defendant Harris pled guilty on January 3, 2001 to the charge of Unlawful Sexual Intercourse in the First Degree. The court ordered a presentence investigation and sentencing was scheduled for March 16, 2001. This sentence date was continued after the defendant sought to withdraw his guilty plea. Harris' counsel at the time of the plea suggested that he contact other counsel if he was going to move to withdraw the plea. There was no sentencing date set until October 22, 2007, when a summons was issued to the defendant for sentencing on November 2, 2007. Harris and his original counsel appeared and moved to dismiss the indictment based on the delay in sentencing. The trial court denied the motion and sentenced the defendant to two years at Level V, suspended for eighteen months at Level I probation.[111]

On appeal, Harris claimed that the almost seven year delay violated his due process and speedy trial rights. The court noted that there was no decision of the United States Supreme Court deciding whether the Sixth Amendment contains the right to a speedy sentencing.[112] The court, relying on its previous decision in *Johnson v. State,*[113] assumed that the Sixth Amendment did require speedy sentencing and analyzed the right under the speedy trial factors.[114]

On the first factor, the court noted that the length of the delay was extraordinary and weighed in favor of the defendant.[115] Regarding the second factor, the reason for the delay, the court found this factor also weighed in the defendant's favor as there was no reason for the delay in the record.[116] The case, according to the Superior Court, "simply fell through the cracks."[117] The court ruled the delay was the responsibility of the trial court and not the fault of the defendant.[118]

As to the third factor, there was no assertion of his right to a speedy sentencing by the defendant and this factor weighed against him.[119] The court next noted that the fourth factor, prejudice to the defendant was neutral on the facts.[120] The defendant essentially served a six and one-half year sentence prior to his actual sentencing.[121] The defendant's pretrial compliance also created mitigating sentencing evidence in his behalf.[122]

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111. *Id.* The Superior Court denied the motion to dismiss after considering the four part test for speedy trial claims under Barker v. Wingo, 407 U.S. 514, 530 (1972). Harris, 956 A.2d at 1274 & n.3.

112. *Id.* at 1275.

113. 305 A.2d 622 (Del. 1973).

114. 956 A.2d at 1275 (citing Key v. State, 463 A.2d 633, 636 (Del. 1983); Boyer v. State, No. 418, 2002, 2003 WL 21810824, at *2 (Del. Aug. 4, 2003); Bodnari v. State, No. 97, 2003, 2003 WL 22880372, at *3 (Del. Dec. 3, 2003)). The court also noted that the Supreme Court of Arkansas, at least seventeen other jurisdictions, and almost every Court of Appeals have analyzed the right to speedy trial issue under the same approach under *Barker. Harris*, 956 A.2d at 1275 n.8.

115. *Id.* at 1276.

116. *Id.*

117. *Id.*

118. *Id.* The defendant had requested a postponement of his original sentencing date but the court found the delay after the initial continuance was unreasonable and attributable to the trial court. *Id.* at 1277.

119. *Id.* (citing *Key*, 463 A.2d at 637 (defendant has some responsibility "to call attention to a speedy [sentencing] violation")).

120. *Harris*, 956 A.2d at 1277.

121. *Id.* at 1278.

122. *Id.*

Considering all of the *Barker* factors, the court concluded that the extraordinary delay and the lack of any justifiable reason for the delay weighed most heavily in favor of the defendant.[123] The court ruled that Harris' right to a speedy sentencing under the Sixth Amendment was violated and reversed the ruling of the Superior Court.[124]

## C. Denial of Severance for Sexual Abuse Charges of Same Nature Involving Two Victims—*Wood v. State*

In *Wood v. State,*[125] the court held that multiple counts of Rape and Continuous Sexual Abuse of a Child were properly tried together where charges involved two victims of similar ages who were deceived into performing sex acts and the offenses were sufficiently similar in nature.[126]

Defendant Wood was charged with sexual abuse charges involving two different children. The first victim, CG, was a child who lived in the Linden Green apartments on the third floor from January 1994 to July 2001. The defendant lived on the second floor of the same building and began sexually abusing CG in 1996 when she was six years old. The abuse occurred when CG and her siblings came to the defendant's apartment to play games with his son. The defendant would play hide and seek with the children and then place CG in his locked bedroom and sexually abuse her. Some of the incidents involved the defendant feeding the girl ice cream while blindfolded. The defendant also would show pornographic material to the victim. The victim testified this abuse occurred over fifty times over a three year period. In 2005, the victim told her mother about the abuse and the police were contacted.[127]

The second victim was the defendant's stepdaughter, SP. The defendant first met SP's mother in 1997 and moved in four months later. The defendant began abusing this victim on a daily basis when she was ten years old. On the first occasion, the defendant claimed to be in pain and gave a "doctor's note" to SP which described various sex acts to be performed. The victim testified that the defendant would sometimes videotape and blindfold her, and she was told to keep the sexual abuse secret from her mother. This sexual abuse over the five year period from 2000 to 2005 occurred between 500 to 2,000 times. In 2004, SP told her boyfriend about the acts of her stepfather and advised a counselor in 2005.[128]

The State indicted the defendant on eighteen counts of Rape First Degree and two counts of Continuous Sexual Abuse of a Child for criminal acts committed against both children. The trial court denied the defense motion to sever. At trial, Wood was convicted on all charges except two counts of Rape First Degree on which the jury could not agree on a verdict.[129]

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123. *Id.* at 1279. The court noted that other states have also found speedy sentencing violations for comparable delays. *Id.* & n.39 (citing Jolly v. Arkansas, 189 S.W.3d 40, 48-49 (Ark. 2004); Trotter v. Mississippi, 554 So. 2d 313, 318 (Miss. 1989); Massachusetts v. Ly, 875 N.E.2d 840, 845-46 (Mass. 2007); New York v. Drake, 462 N.E.2d 376, 380 (N.Y. 1984); Washington v. Ellis, 884 P.2d 1360, 1362 (Wash. App. Ct. 1994)).

124. *Harris*, 956 A.2d at 1279.

125. 956 A.2d 1228 (Del. 2008).

126. *Id.* at 1232.

127. *Id.* at 1229.

128. *Id.* at 1229-30.

129. *Id.* at 1230.

The sole issue on appeal concerned the trial court's denial of the motion for severance. In the court's view, the offenses were properly joined in the indictment as the charged derived from the sufficiently similar incidents.[130] The offenses were similar and suggested a common scheme or plan.[131] All of the charges involved victims of similar ages and both victims were deceived by the defendant to commit sex acts. Both children were also shown pornography and were threatened to not tell anyone of the abuse.[132] The court found that the multiple offenses implied a common scheme or plan, or at least were sufficiently of a similar nature to allow joinder under Superior Court Criminal Rule 8(a).[133]

The court did not find that the defendant had met his high burden of demonstrating a reasonable probability of prejudice to warrant severance under Rule 14.[134] The record did not support the defendant's claim that joinder led the jury to accumulate evidence and infer that he had a criminal propensity.[135] The jury did send out a number of notes during its deliberations and was unable to agree on a verdict on two counts. In addition, the trial court did instruct the jury on the burden of proof on each count and the jury was presumed to follow that instruction. The court also rejected the defense argument that joinder prevented him from testifying.[136] The defendant did argue at trial that the two victims knew each other, had tried to coordinate their stories, and both delayed in reporting any criminal acts.[137] The court concluded that the joinder was proper and the trial court did not abuse its discretion in denying the motion to sever.[138]

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130. *Id.* at 1231-32 (citing SUPER.CT. CRIM. R. 8(a); Massey v. State, 953 A.2d 210, 216 (Del. 2008); Caldwell v. State, 780 A.2d 1037, 1054-55 (Del. 2001); Skinner v. State, 575 A.2d 1109, 1117 (Del. 1990)).

131. *Harris*, 956 A.2d at 1232 (citing State v. Hermes, 2002 WL 484647 (Del. Super. Mar. 28, 2002)).

132. *Id.*

133. *Id.*

134. *Id.* The court noted that prejudice which may make severance appropriate exists where:

> (1) [T]he jury may cumulate the evidence of various crimes charged and find guilt when, if considered separately, it would not so find; (2) [T]he jury may use the evidence of one of the crimes to infer a general criminal disposition of the defendant in order to find guilt of the other crime or crimes; and (3) [T]he evidence may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.

*Id.* at 1231 (quoting *Caldwell*, 780 A.2d at 1055 (quoting Wiest v. State, 542 A.2d 1193, 1195 (Del. 1988)).

135. *Harris*, 956 A.2d at 1232.

136. *Id.*

137. *Id.*

138. *Id.*

# APPENDIX
# DELAWARE SUPREME COURT
# CRIMINAL LAW OPINIONS—2008

*Allen v. State,* 953 A.2d 699, 701 (Del. 2008) (trial court did not err in rejecting defendant's instruction that jury must not accumulate the evidence).

*Benge v. State,* 945 A.2d 1099, 1101-02 (Del. 2008) (defendant's challenge to guilty plea was procedurally defaulted and he was not prejudiced by error in plea colloquy; defendant waived a double jeopardy claim at his sentencing hearing; Delaware sentencing scheme with nonbinding Truth in Sentencing guidelines did not entitle defendant to relief under an Apprendi claim of illegal sentence).

*Blake v. State,* 954 A.2d 315, 318-19 (Del. 2008) (exigent circumstances including blood curdling screaming of baby after loud boom justified the police officers' warrantless entry into defendant's apartment).

*Brown v. State,* 958 A.2d 833, 834 (Del. 2008) (trial court erred in failing to give alibi instructions after both defendants had requested such instructions and credible evidence was presented at trial to support their alibi defenses).

*Burrell v. State,* 953 A.2d 957, 962-63 (Del. 2008) (historic factual record supporting trial court's finding that defendant committed murder "in furtherance of" an armed robbery that he planned with accomplice; jury instruction on felony murder was legally adequate).

*Carrigan v. State,* 945 A.2d 1073, 1078 (Del. 2008) (conversation between judge and probation officer about defendant's noncompliance with probation terms did not violate defendant's due process right to an impartial judge at violation of probation hearing).

*Chavous v. State,* 953 A.2d 282, 286-87 (Del. 2008) (defendant's motion to withdraw guilty plea was properly denied where alleged breach by State was harmless as defendant received benefit of the plea agreement).

*Claudio v. State*, 958 A.2d 846, 851-52 (Del. 2008) (Superior Court properly denied defendants' postconviction motions as jury instructions on felony murder at the trial substantially complied with Court's decision in Williams and did not track language used in Chao).

*Coles v. State,* 959 A.2d 18, 24-25 (Del. 2008) (trial court did not err in refusing to issue a material witness warrant for a defense witness whose potential testimony was neither "material" or "favorable" to the defense; prior statement of witness that referred to a different shooting was not admissible under D.R.E. 807; rational basis existed for trial court's instructions on lesser included offenses of Murder in the Second Degree and Manslaughter).

*Cseh v. State,* 947 A.2d 1112, 1115-16 (Del. 2008) (defendant who brandished sledgehammer during attempted robbery of store clerk failed to present any evidence supporting lesser included instruction for Attempted Robbery Second Degree, Aggravating Menacing, or Attempted Felony Theft).

*Culver v. State,* 956 A.2d 5, 14-15 (Del. 2008) (majority held that probation officers unlawfully searched home of defendant probationer based on tip from anonymous caller to police to probation since search violated DEL. CODE ANN. tit. 11, § 4321 and Parole and Probation Procedure 7.19).

*Czech v. State,* 945 A.2d 1088, 1095, 1097-98 (Del. 2008) (special accommodation to allow mother to sit behind child who was testifying was harmless error as child's testimony had little probative value; defendant waived issue regarding admission of statements made by complainant's mother since defense had refrained from objecting at trial for tactical reasons; prosecutor's closing argument that asked jurors to draw on collective life experience when evaluating credibility of young child witness did not constitute improper vouching).

*Dabney v. State,* 953 A.2d 159, 169 (Del. 2008) (delays in the scheduling of the defendant's trial on charge of Rape Second Degree violated constitutional right to speedy trial).

*Dailey v. State,* 956 A.2d 1191, 1194-95 (Del. 2008) (State could admit videotaped statement of complaining witness under § 3507 after her trial testimony touched on the events and the prior statement; defendant's decision not to testify mooted any claim that trial judge may have erred in indicating that his prior conviction would be admissible; prosecutor's comments in closing merely commented on the evidence and were not improper).

*Fisher v. State,* 953 A.2d 258, 260 (Del. 2008) (defendant's conviction for possession of cocaine was not a lesser-included offense of maintaining a dwelling).

*Flamer v. State,* 953 A.2d 130, 134-36 (Del. 2008) (failure of appellate counsel to cite any authority in support of legal argument constituted waiver of issue; trial court did not err in permitting State to play only portion of witness' taped conversation with defendant who raised no objection at trial).

*Foster v. State,* 961 A.2d 526, 528-30 (Del. 2008) (State's reference in opening statement to CSI was not plain error; complaining witness' statements immediately after the robbery were admissible under exited utterance hearsay exception and § 3507).

*Gattis v. State,* 955 A.2d 1276, 1285, 1287, 1289, 1291, 1293 (Del. 2008) (current trial judge did not abuse discretion in denying motion to disqualify; defendant's attempt to relitigate ineffective assistance of counsel claim was procedurally barred; trial court was not required under Apprendi to find beyond a reasonable doubt that the aggravating circumstances outweighed the mitigating circumstances; defendant failed to demonstrate that contact by trial judge with discharged jurors was prejudicial; record did not support claim that trial judge gave undue weight to jury's penalty hearing recommendation).

*Greene v. State,* 967 A.2d 144, 145 (Del. 2008) (State's motion to affirm denied where arguable issue existed concerning lack of Miranda warnings given to defendant before police questioning).

*Hardy v. State,* 962 A.2d 244, 247-48 (Del. 2008) (State in closing argument improperly vouched for State's case and conduct constituted plain error).

*Harris v. State,* 956 A.2d 1273, 1278-79 (Del. 2008) (six and one-half year delay between the defendant's plea and sentence violated his Sixth Amendment right to a speedy sentencing).

*Hignutt v. State,* 958 A.2d 863, 867-68, 870 (Del. 2008) (State witness' brief testimony about his lifetime goals was admissible on issue of "good character" of witness; no basis existed for instruction on lesser-included offense of theft misdemeanor as there was no dispute that value of parts appropriated exceeded $1,000).

*Hudson v. State,* 956 A.2d 1233, 1237-39 (Del. 2008) (trial court did not err in permitting State's chief investigating officer, who had sufficient specialized narcotics training, to testify as both a fact witness and as an expert).

*Jianniney v. State,* 962 A.2d 229, 230 (Del. 2008) (admission of Mapquest driving time estimates not proven to be reliable or generally accepted were inadmissible under D.R.E. 803(17) but error was harmless beyond a reasonable doubt).

*Johnson v. State,* 962 A.2d 233, 234 (Del. 2008) (defendant's direct appeal that challenged her guilty plea and sentence was barred by Superior Court Rule 32(d) as proper relief should be sought under Rule 61).

*Justice v. State,* 947 A.2d 1097, 1099 (Del. 2008) (prosecutor's question and witness' answer regarding DELJIS search for defendant's date of birth was harmless based on trial court's curative instruction).

*LeGrande v. State,* 947 A.2d 1103, 1105 (Del. 2008) (police search warrant for defendant's apartment lacked probable cause as a matter of law where police relied on anonymous tip but failed to corroborate any information to establish the reliability of the tip asserting that the defendant possessed drugs in his premises).

*Lopez-Vazquez v. State,* 956 A.2d 1280, 1291-92 (Del. 2008) (police lacked reasonable suspicion to stop suspect who was observed conversing with target of drug investigation, and who later entered and exited a multi-unit apartment building, and his subsequent consent to search his vehicle was tainted).

*Mason v. State,* 963 A.2d 124, 127 (Del. 2008) (trial court erred in admitting portion of taped statement that contained questions about suspect's pending violation of probation where suspect was arrested for murder, but error was harmless beyond reasonable doubt).

*Massey v. State,* 953 A.2d 210, 215-18 (Del. 2008) (photographs of victim's knife wounds were not inflammatory and did not require limiting instruction; deficiency in jury instruction on PDWDCF was harmless; denial of severance on PDWPP charge was not prejudicial error; trial court's decision use of limiting instruction on issue of defendant's prior crimes which differed from defense proposal was not error).

*McDonald v. State,* 947 A.2d 1073, 1079-80 (Del. 2008) (four corners of arrest warrant failed to set forth probable cause for officer's traffic stop of vehicle leaving private property that failed to use turn signal).

*McKinley v. State,* 945 A.2d 1158, 1164-65 (Del. 2008) (State presented sufficient evidence to prove Murder Second Degree charge where defendant was traveling around 93 to 100 miles per hour at the time of impact with victim's car after leading police on a high speed chase in which he ignored several red lights and drove on the wrong side of the road).

*Morgan v. State,* 962 A.2d 248, 252-54 (Del. 2008) (search warrant to search defendant's home, based on corroborated tip from past proven reliable informant, was supported by probable cause; trial court was not required to give sua sponte curative instruction after detective testified about forfeiture form completed by defendant after arrest).

*Newman v. State,* 942 A.2d 588, 590-91 (Del. 2008) (defendant's conviction for resisting arrest affirmed as suspect's knowledge of identity of law enforcement officer is not an element of the offense).

*Nyala v. State,* 955 A.2d 1275 (Del. 2008) (defendant's original sentence in 2001 which contained a probationary term that did not exceed the maximum term of confinement was not an illegal sentence under DEL. CODE ANN. tit. 11, § 4333).

*Revel v. State,* 956 A.2d 23, 27-30 (Del. 2008) (witness' isolated comment about defendant declining to make a statement and requesting a lawyer was improper comment on defendant's Fifth Amendment rights but did not warrant granting of a mistrial).

*Scarborough v. State,* 945 A.2d 1103, 1105-06 (Del. 2008) (court ruled that State and defendant entered an oral agreement in addition to the written plea agreement and that the State excused the defendant from the term of that agreement, so that the terms of the original sentence that were contrary to the oral agreement were vacated).

*Sierra v. State,* 958 A.2d 825, 832-33 (Del. 2008) (warrantless administrative search by probation officers was not supported by reasonable suspicion where officers relied on a tip from an informant who was not past proven reliable, and the officers violated the internal Probation Regulations).

*Smith v. State,* 963 A.2d 719, 722-23 (Del. 2008) (witness' statement that referenced defendant's possible sentence as habitual offender and plea offer of ten years was sufficiently cured by trial court's instruction and did not warrant mistrial).

*Staats v. State,* 961 A.2d 514, 517-20 (Del. 2008) (defendant's Rule 61 motion filed within one year of Supreme Court mandate on direct appeal was timely, but claims of ineffective assistance of counsel were without merit).

*State v. Meades,* 947 A.2d 1093, 1095-97 (Del. 2008) (police lacked reasonable suspicion to detain suspect and court would not consider new theory advanced on appeal by the State that the suspect voluntarily responded to police questioning).

*State v. Sturgis,* 947 A.2d 1087, 1089 (Del. 2008) (Superior Court's reduction of sentence of Attempted Murder in the First Degree from fifteen years to eleven years and six months of time served was not permissible under Rule 35(b) or under DEL. CODE ANN. tit. 11, § 4217(f)).

*Swanson v. State,* 956 A.2d 1242, 1243 (Del. 2008) (defense witness' invocation of Fifth Amendment on cross-examination did not constitute manifest necessity for grant of a mistrial).

*Sykes v. State,* 953 A.2d 261, 267, 269, 271-73 (Del. 2008) (sentence of death by lethal injection did not constitute cruel and unusual punishment; trial judge's comment to jury during guilt phase that defendant would have opportunity to allocute did not warrant mistrial based on curative instruction; complete Batson analysis did not show State used its peremptory challenges to exclude jurors based on race; defendant failed to establish actual prejudice from denial of change of venue motion; contact by defense witness with jurors at baseball game did not require new trial; trial court's imposition of the death penalty was not arbitrary or capricious and death sentence was not disproportionate to penalty imposed in similar cases).

*Taylor v. State,* 982 A.2d 279, 281-83 (Del. 2008) (victim's late disclosure of a second journal on first day of trial did not constitute a Rule 16 discovery violation by the State nor was there a clear record to support his claim of prejudice from a denied continuance request).

*Turner v. State,* 957 A.2d 565, 571-73 (Del. 2008) (trial court did not err in admitting defendant's statement seeking to speak to police if his girlfriend would not be incarcerated on conspiracy charge; trial judge did not err in sentencing defendant as habitual offender under DEL. CODE ANN. tit. 11, § 4214(a) to sentence of two life terms plus 87 years when court was required by statute to impose sentence greater than the statutory maximum).

*Wallace v. State,* 956 A.2d 630, 631-32 (Del. 2008) (trial court's finding defendant of guilty but mentally ill on charges of Murder First Degree and PDWCF for killing his nine year old cousin when the defendant was age 15 3/4 years, did not violate U.S. CONST. AMEND. 8 or DEL. CONST. ART. I, § 11).

*Waterman v. State,* 956 A.2d 1261, 1265 (Del. 2008) (trial court committed harmless error in departing from the Flonnory default rule by allowing videotaped statement of child victim to go to the jury during deliberations).

*Wilkerson v. State,* 953 A.2d 152, 157 (Del. 2008) (trial court did not abuse discretion in limiting defense cross-examination of prior act of abuse that was collateral).

Williams v. State, 962 A.2d 210, 216, 219-21 (Del. 2008) (police officer's initial encounter with person walking on a highway at 3:50 a.m. in cold, windy weather was not a seizure, and actions were further reasonable under the community caretaker doctrine).

*Wilson v. State,* 950 A.2d 634, 639-40 (Del. 2008) (trial court erred in permitting redaction of portion of plea agreement of testifying co-conspirator).

*Winer v. State,* 950 A.2d 642, 647-49 (Del. 2008) (trial court properly found sufficient circumstantial evidence supported defendant's arson conviction; defendant was properly tried on the arson charge and on a charge of criminal mischief at the police station after his arrest since both offenses were offenses involving property and were of the same of similar character).

*Wood v. State,* 956 A.2d 1228, 1232 (Del. 2008) (multiple counts of Rape and Continuous Sexual Abuse of a Child were properly tried together where charges involved two victims of similar ages who were deceived into performing sex acts and the offenses were sufficiently similar in nature).

*Clifford Wright v. State,* 953 A.2d 188, 190 (Del. 2008) (defendant could be convicted of delivery of cocaine based on his own confession and the testimony of his uncharged co-conspirator who independently proved that Wright sold cocaine).

*Jerrin A. Wright v. State,* 953 A.2d 144, 150-51 (Del. 2008) (defendant could not seek accident instruction at trial where he committed act with criminal negligence from firing handgun multiple times into populated parking lot).