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

STATE OF DELAWARE,	)	
	)	
	)	
v.	)	**Crim. ID. No. 1404000692**
	)	
	)	
ALEX RYLE	)	

Submitted: July 14, 2015
Decided: August 14, 2015

OPINION

Upon Defendant, Alex Ryle's, Motion for a New Trial,
DENIED.

John S. Taylor, Esquire, Deputy Attorney General, Department of Justice, Wilmington, Delaware, for the State of Delaware.

Alex Ryle, *Pro Se*.

WALLACE, J.

I. INTRODUCTION

Defendant, Alex Ryle, filed a motion under Superior Court Criminal Rule 33 claiming he should be granted a new trial "in the interest of justice."[1] Mr. Ryle argues he was unfairly prejudiced during his trial when: (1) the Court denied his sudden mid-trial request for standby counsel; (2) the Court made allegedly erroneous discovery rulings; (3) the Court permitted the State to reference his videotaped statement in its opening statement; and (4) the Court made allegedly erroneous evidentiary rulings. For the reasons below, Mr. Ryle's request for a new trial is **DENIED.**

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 1, 2014, Mr. Ryle was arrested in Wilmington, Delaware, for absconding from probation authorities. When two detectives arrested Mr. Ryle, they uncovered a firearm. Mr. Ryle was later questioned at the police station and confessed to possessing the gun in a post-*Miranda* recorded interview. Due to his previous convictions, Mr. Ryle was and is a person prohibited from possessing a firearm.

Upon Mr. Ryle's request, the Court permitted him to proceed *pro se* on October 27, 2014. Mr. Ryle submitted numerous *pro se* applications and

[1] *See* Def.'s Am. Mot. New Trial, at 1 (citing Super. Ct. Crim. R. 33 ("The court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice.")).

confirmed he wanted to proceed *pro se* at subsequent proceedings, including his Final Case Review and Pretrial Conference.

Mr. Ryle represented himself at trial on February 10 and 11, 2015. On the first day of trial—when he again confirmed that he wanted to continue *pro se*—Mr. Ryle asked to exclude his videorecorded statement and the firearm taken from his person because he had not previously received or examined them. Because Mr. Ryle had never requested accommodations to view the items that an incarcerated *pro se* litigant must, the Court made arrangements to allow Mr. Ryle to review the recording and firearm evidence at the conclusion of that day's proceedings. Mr. Ryle then requested that a forensic chemist's report be excluded because he received it only the week before trial. That report was excluded and the State dropped a controlled substance charge. The parties also stipulated that Mr. Ryle was a person prohibited, so that no evidence of his prior convictions would be presented at trial.

On the second day of trial, Mr. Ryle requested standby counsel. His request was denied. Mr. Ryle was found guilty of possession of a firearm by a person prohibited, possession of ammunition by a person prohibited, and carrying a concealed deadly weapon. He now brings this Motion for a New Trial, arguing

that several of the Court's rulings entitle him to a new trial "in the interest of justice."[2]

III. STANDARD OF REVIEW

Under Superior Court Criminal Rule 33, upon a defendant's motion, the Court may "grant a new trial to that defendant if required in the interest of justice."[3] A new trial is warranted "only if the error complained of resulted in actual prejudice or so infringed upon defendant's fundamental right to a fair trial as to raise a presumption of prejudice."[4]

IV. DISCUSSION

A. Mr. Ryle Was Not Entitled to Have Standby Counsel Appointed on the Second Day of His Two-Day Trial.

Mr. Ryle claims the Court erred by denying him standby counsel. Notably, Mr. Ryle does not challenge his waiver of his right to counsel.[5] The record makes clear that he knowingly, intelligently, and voluntarily waived his right to counsel at his first colloquy on October 27, 2014.[6]

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2 *Id.* at 1.

3 Super. Ct. Crim. R. 33.

4 *Hughes v. State*, 490 A.2d 1034, 1043 (Del. 1985); *see Starling v. State*, 882 A.2d 747, 755 (Del. 2005).

5 *See* Def.'s Am. Mot. New Trial, at 5-6 (arguing that the Court abused its discretion by denying standby counsel).

6 Mot. Withdraw Counsel Tr., Oct. 27, 2014, (D.I. 51) at 4-16. The colloquy included Mr. Ryle's acknowledgement that he would have to conduct his defense in accordance with court

During that October 2014 colloquy, Mr. Ryle acknowledged that the trial court had discretion to appoint standby counsel for him.[7] He thereafter proceeded alone, engaging in prolific motion practice,[8] and appearing on his own behalf at his case reviews, motions hearings, and the arraignment on a re-indictment.[9] He also appeared *pro se* at his pre-trial conference[10] and Final Case Review. At no point

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rules and procedures, and that there are definite hazards to representing himself. The Court also discussed: the nature of the charges and their corresponding punishments; Mr. Ryle's high school graduate level education; and Mr. Ryle's experience with the criminal justice system. It found Mr. Ryle knowingly, intelligently, and voluntarily waived his right to counsel. *See Briscoe v. State*, 606 A.2d 103, 108 (Del. 1992) (setting forth factors the trial court should address with defendants who wish to waive their right to counsel).

7 *See* Mot. Withdraw Counsel Tr., Oct. 27, 2014, at 10.

> THE COURT: Do you understand that the Court in its discretion may appoint a standby lawyer to assist you and to offer consultation whether you desire a standby lawyer or not?
>
> MR. RYLE: Meaning having a lawyer in defense? [. . .] Somebody sitting on the side?
>
> THE COURT: Right, sitting on the side.
>
> MR. RYLE: Yes, yes.
>
> THE COURT: And the Court may or may not have someone sitting on the side, but it's going to be up to the Court to decide.
>
> MR. RYLE: Yes.

8 *See, e.g.*, Mot. Sever (D.I. 14); Mot. Suppress (D.I. 15); Mot. Disclose Identity of a Confidential Informant (D.I. 18); Mot. Dismiss For Lack of Speedy Trial, Delay in Filing an Information, and Due Process Violations (D.I. 24); Mot. Dismiss (D.I. 28); Mot. *in Limine* (D.I. 29).

9 *See* D.I. 19, D.I. 24, and D.I. 52.

10 *See* Pretrial Conference Tr., Feb. 9, 2015.

during those proceedings did he ask for assignment of or assistance by counsel. It was not until the beginning of the second day of trial that Mr. Ryle mentioned–for the first time–standby counsel.[11]

"There is no right to standby counsel."[12] Although the practice of appointing standby counsel is encouraged in Delaware, "each request must be evaluated on its merits and the circumstances."[13] It is within the trial court's discretion to grant such a request.[14] Here, Mr. Ryle's first request for standby counsel came suddenly and mid-trial, after he had proceeded *pro se* for months. Mr. Ryle was aware of his ability to request standby counsel as of his October 27, 2014 colloquy. The record reflects that he had no desire to seek the assistance of standby counsel until the trial was well underway. The Court considered Mr.

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[11] Trial Tr., Feb. 11, 2015, at 7-8.

> THE COURT: And, yes, generally there is the ability to give standby counsel. This is the first you've made any request for standby counsel --
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> MR. RYLE: Right.
>
> THE COURT: -- in this case. [. . .]

See Def.'s Am. Mot. New Trial, at 5 ("On 2/11/15, the Defendant, a pro se litigant, requested stand-by counsel . . .").

[12] *Hicks v. State*, 434 A.2d 377, 380 (Del. 1981).

[13] *Bass v. State*, 2000 WL 1508724, at *1 (Del. Sept. 13, 2000).

[14] *See Bass*, 2000 WL 1508724, at *2 ("Delaware case law has consistently emphasized that the decision to appoint standby counsel rests within the discretion of the trial court."); *Briscoe v. State*, 606 A.2d 103, 109 (Del. 1992).

Ryle's request to obtain standby counsel on the second day of trial, weighed the then-extant circumstances, and denied Mr. Ryles's request.[15] Granting his request then no doubt would have caused confusion in and disruption of the proceedings.[16] There was no error in denying Mr. Ryle's untimely request for standby counsel. Thus, a new trial is not warranted in the interest of justice on this claim.

B. The Court Did Not Err in Denying Mr. Ryle's Request to Exclude Certain Physical Evidence or His Recorded Statement.

In an October 28, 2014—the day after Mr. Ryle was permitted to proceed *pro se*—letter to the then-assigned prosecutor, Mr. Ryle requested certain supplemental reports, "all physical evidence" the State had it in its possession, and "Brady material."[17] This was Mr. Ryle's only communication that could be considered a discovery request. Yet, on February 10, 2015, after the jury was selected and trial was to begin, Mr. Ryle moved to exclude his videoed statement and certain physical evidence on the grounds that those items had not been

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[15] Trial Tr., Feb. 11, 2015, at 7-9.

[16] *See, e.g.*, *Zuppo v. State*, 807 A.2d 545, 547-48 (Del. 2002) (when exercising its discretion on a mid-trial request to proceed *pro se* (*i.e.*, a right that is otherwise "fundamental"), the Court "must weigh the legitimate interests of the defendant against the prejudice that may result from the potential disruption of proceedings already in progress").

[17] *See* Def.'s Ltr., Oct. 28, 2014 (D.I. 17) ("I am requesting Detective(s) Coleman and Schupps' supplemental reports (in regards to the criminal incident on or about 4/1/14), as well as any and all physical evidence (e.g. weapon & toxicological reports, etc.) the State has in their possession" and "the 'Brady Material'").

provided to him prior to trial. The Court heard his application and made several trial-day rulings[18] that Mr. Ryle now challenges.

First, the Court notes Mr. Ryle's generalized allusion to and complaints that he was not provided "*Brady* material" are unavailing – he has identified nothing that could be considered "*Brady* material" or any act by the State that could be considered a "*Brady* violation."[19]

Mr. Ryle claims he was unfairly prejudiced when he was permitted to review his recorded statement the day before the prosecution used it at trial.[20] Superior Court Criminal Rule 16 does permit a defendant's pretrial inspection of his written or recorded statements and any documents or tangible objects which the State intends to use as trial evidence *upon request*.[21] But a defendant must actually request access to such statements and object before the duty to disclose derives.[22]

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[18] Trial Tr., Feb. 10, 2015, at 23-42; Trial Tr., Feb. 11, 2015, at 3-5, 9-22.

[19] *See Michael v. State*, 529 A.2d 752, 755 n.6 (Del. 1987) (citing *Brady v. Maryland*, 373 U.S. 83 (1963)) (defining *Brady* material as "evidence favorable to the defendant and material either to guilt or punishment"); *Starling v. State*, 882 A.2d 747, 756 (Del. 2005) (describing the three components of a *Brady* violation: "(1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the State; and (3) its suppression prejudices the defendant").

[20] The case Mr. Ryle cites to support this claim, *Oliver v. State*, is inapposite here. *See* 60 A.3d 1093 (Del. 2013) (discussing prejudice that accompanied delayed State's production of State's expert's "highly technical" materials).

[21] Super. Ct. Crim. R. 16(a)(1)(A)-(C).

[22] Super. Ct. Crim. R. 16(a)(1)(A) ("Upon request of a defendant the state shall disclose to the defendant . . . any relevant written or recorded statements made by the defendant . . ."); *id.* at 16(d)(3)(A) ("The defendant may serve a request [for discovery]. . .").

And, as a practical matter, when those materials are recordings or objects (*e.g.*, a semiautomatic handgun) not normally permitted in a penal institution, a detained *pro se* litigant must also request arrangements to inspect them. Mr. Ryle did neither as to his statement.[23]

Even if Mr. Ryle had made a proper discovery request and the State had failed to timely disclose discoverable materials, the Court had broad discretion in remedying such.[24] And exclusion of evidence is certainly not the only cure, even when an actual discovery violation occurs.[25] Mr. Ryle has espoused the broad legal principles in his filings, but he has not articulated any actual prejudice he suffered from the Court's ruling regarding his review and the State's use of his recorded statement.[26]

Mr. Ryle further complains that the seized handgun was not produced for his inspection. He points to his October 28, 2014 letter to the then-assigned prosecutor, where he wrote simply: "I am requesting . . . any and all physical

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[23] *See* Def.'s Ltr., Oct. 28, 2014 (D.I. 17) (while "requesting" other materials, Mr. Ryle makes no mention of his statement); *see also* Trial Tr., Feb. 10, 2015, at 23-34 (discussion of Mr. Ryle's requests).

[24] *See Cabrera v. State*, 840 A.2d 1256, 1263 (Del. 2004) ("The trial judge has broad discretion to fashion the appropriate sanction for a discovery violation.").

[25] *See id.* (quoting *Seward v. State*, 723 A.2d 365, 374 (Del. 1999)) ("When deciding whether sanctions should be imposed, the trial court should consider all relevant factors, including 'the reasons for the State's delay and the extent of prejudice to the defendant.'")

[26] *See State v. Sierra*, 2012 WL 3893532, at *3 (Del. Super. Ct. Sept. 6, 2012) (citing *Starling v. State*, 882 A.2d 747, 755 (Del. 2005)) ("Without demonstrated prejudice, a new trial is not warranted.").

evidence (e.g. weapon & toxicological reports, etc.) the State has in their possession." But, as the Court noted at trial, because he decided to proceed *pro se* and was detained, Mr. Ryle needed to specify and make arrangements for how any desired items would be shown to him.[27] Mr. Ryle did not do so. Nor did he file a motion to compel their production.[28] Because Mr. Ryle was proceeding *pro se* and was in pretrial custody, the weapon could not be sent to the prison for Mr. Ryle to inspect it.[29] Once Mr. Ryle finally raised the issue, the Court insured he had an opportunity to view the weapon and all physical items of evidence prior to trial commencing.[30] Mr. Ryle cannot now demonstrate how, in the interests of justice, a new trial is warranted on any of his discovery claims.

C. The Prosecutor's Reference to Mr. Ryle's Recorded Statement Before Its Introduction was Proper.

Mr. Ryle claims the State should not have referenced his video statement in its opening to the jury. A prosecutor, in an opening statement, may allude to

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[27] Trial Tr., Feb. 10, 2015, at 27-28; Trial Tr., Feb. 11, 2015, at 9-18. *See* Super. Ct. Crim. R. 16(d)(3)(A) ("The defendant may serve a request [for discovery]. . . The request shall set forth the items sought with reasonable particularity and shall specify a reasonable time, place and manner of compliance with the request.").

[28] Super. Ct. Crim. R. 16(d)(3)(C) ("If a party fails to comply with a request, the opposing party may move for an order compelling compliance with the request. A motion to compel shall be filed within ten days" after the time to respond). *See* Trial Tr., Feb. 10, 2015, at 14 (Court citing this language as one basis for its discovery ruling).

[29] Trial Tr., Feb. 10, 2015, at 27-28, 34-36.

[30] *Id.* at 41-42, 57, 93; Trial Tr., Feb. 11, 2015, at 3.

evidence that he or she intends to offer and believes in good faith will be admissible at trial.[31] Here, the State had a reasonable basis to believe Mr. Ryle's videorecorded statement would be admissible because an opposing party's admissions against interest are admissible under the Delaware Rules of Evidence.[32] Thus, the State could properly refer to Mr. Ryle's recorded statement in its opening to the jury. A new trial is therefore not warranted in the interest of justice on this ground.

D. The Court Did Not Err in Admitting Evidence Authenticating the Firearm or Relating to the Underlying Investigation.

1. The police officers were proper witnesses to authenticate the firearm.

Mr. Ryle claims that the testifying police officers were not authorized to "authenticate" the firearm because they were not tendered as expert witnesses.[33] Mr. Ryle did not object to the police officers' testimony at trial and now raises this argument for the first time in his motion for new trial. Under the Delaware Rules of Evidence, "[e]rror may not be predicated upon a ruling which admits . . .

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[31] *See Quill v. State*, 2014 WL 4536556, at *3 (Del. Sept. 12, 2014) (citing *Hughes v. State*, 437 A.2d 559, 567 (Del.1981)); *Davis v. State*, 2014 WL 3943100, at *2 (Del. Aug. 12, 2014).

[32] *See Farlow v. State*, 2015 WL 3454591, at *3 (Del. May 28, 2015) (a criminal defendant's inculpatory out-of-court statements are properly admissible as non-hearsay party admissions against interest under D.R.E. 801(d)(2)). *See also Hughes*, 437 A.2d at 567 ("It is unprofessional conduct to allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be tendered and admitted in evidence.").

[33] *See, e.g.*, Def.'s Am. Mot. New Trial, at 4 ("The Court Abused Its Discretion in Admitting Physical Evidence Without Interpretive Testimony from a Qualified Witness").

evidence" unless "a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context. . ."[34] And "new trial grounds must have been asserted during the preceding trial" to obtain relief under Superior Court Criminal Rule 33.[35] Having failed to make a timely objection to the police officers' testimony about the firearm, Mr. Ryle cannot now claim the Court erred and request a new trial based on such alleged error.[36]

Even if the Court could consider the admissibility of the officers' testimony, the State did not need an expert "to determine authentication of a firearm that defendant was allegedly in possession of and on trial for."[37] The State contends that the police officers who identified Ryle's handgun were not offered as experts, nor did they need to be. At trial, the police officers provided lay witness testimony. Lay testimony, under Delaware Rule of Evidence 701, is "limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the

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[34] D.R.E. 103(a); *see also Damiani-Melendez v. State*, 55 A.3d 357, 359-60 (Del. 2012).

[35] *State v. Sierra*, 2012 WL 3893532, at *3 (Del. Super. Ct. Sept. 6, 2012).

[36] *State v. Ruiz*, 2002 WL 1265533, at *2 (Del. Super. Ct. June 4, 2002); *State v. Halko*, 193 A.2d 817, 830 (Del. Super. Ct. 1963).

[37] *See, e.g.*, Def.'s Am. Mot. New Trial, at 4.

determination of a fact in issue and (c) not based on scientific, technical or other specialized knowledge. . ."[38]

The identification of the handgun (and the fact that it was "real") was rationally based on the officers' own perceptions of what they say was removed from Mr. Ryle's person. That testimony clearly was relevant to a fact in issue, and it was not based on specialized, technical, or scientific knowledge. Any eyewitness who has previously seen a firearm can identify that firearm for the purposes of its authentication and introduction into evidence at trial—expert testimony is not required.[39] The officers' identification of the firearm and its nature here was therefore proper. As such, a new trial is not warranted in the interest of justice for admitting the officers' testimony.

2. The Court properly ruled on the scope of evidence relating to the fact that Mr. Ryle was "under investigation" when confronted by the police.

Next, Mr. Ryle argues that the Court improperly admitted testimony that Mr. Ryle was "under investigation" when police made contact with him on April 1, 2014. Yet, in almost the same breath, Mr. Ryle claims the Court improperly restricted his evidence of the very same investigation.

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38 D.R.E. 701.

39 *See Whitfield v. State*, 524 A.2d 13 (Del. 1987) (State may authenticate a firearm it claims was the actual instrumentality of a crime by having a witness visually identify the weapon as the actual instrumentality of the crime); *see also Short v. State*, 865 A.2d 512, 515 (Del. 2004) (an expert witness is not needed in order to determine if an item is a firearm).

The topic of the underlying investigation was first raised during the Pretrial Conference held the day before trial began. Mr. Ryle was apparently under investigation for violating probation or other matters at the time of his arrest for the instant charges. The State filed a motion to exclude evidence of that investigation, which the Court granted, finding it was irrelevant and would be confusing to the jury.[40] Mr. Ryle wanted to argue "in general" why he had been stopped, but the Court found that that had already been dealt with in his Motion to Suppress.[41]

Before beginning trial, Mr. Ryle confirmed that he understood the evidentiary rulings from the Pretrial Conference.[42] Nonetheless, during his cross-examination of the State's first witness, Detective Mullin, Mr. Ryle began questioning him about the underlying investigation. The Court, outside of the presence of the jury, asked Mr. Ryle if he intended to ask questions leading to the topic of the investigation—Mr. Ryle said he intended to elicit testimony that he was the focus of an investigation.[43] Mr. Ryle then proceeded with his cross-examination. Detective Mullin testified that he was tasked with locating Mr. Ryle, who was the focus of an investigation, just as Mr. Ryle wished.[44] The Court then

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40 Pre-Trial Conference Tr., Feb. 9, 2015, at 4-6.

41 *Id.* at 5-6.

42 Trial Tr., Feb 10, 2015, at 45-49.

43 *Id.* at 65-68.

44 *Id.* at 69.

instructed the jurors that they were not to speculate about what that investigation entailed, and that the only purpose of that testimony was to explain why the detective was there and took an interest in Mr. Ryle.[45] Mr. Ryle asked the State's next witness, Detective Schupp, about his role in the investigation as well.[46]

The record reveals that the Court, contrary to Mr. Ryle's claims, did not restrict Mr. Ryle's cross-examination in any way on the subject of him being the subject of an investigation. Despite the Court's ruling excluding such testimony at the Pretrial Conference, and the Court's caution during trial, Mr. Ryle opened the door to such testimony by asking the State's witnesses about the investigation on cross-examination. When a party elicits testimony on a subject, as Mr. Ryle did by asking the officer why he was at the location where he stopped Mr. Ryle, he cannot then object even if the opposing party goes on to introduce evidence on the same subject[47]–which did not occur here. Mr. Ryle introduced the evidence he now complains of. And after he solicited that testimony, the Court gave an instruction to the jury directing them not to consider why the police stopped him or for what Mr. Ryle was under investigation.[48]

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45 *Id.* at 70-71.

46 *Id.* at 78-79.

47 *Smith v. State*, 913 A.2d 1197, 1239 (Del. 2006).

48 Trial Tr., Feb 10, 2015, at 70-71.

Curative instructions are presumed to relieve any potential prejudice even from testimony that is improperly elicited.[49] Here, the officer's testimony about the existence of an investigation was properly admitted—Mr. Ryle was not prejudiced by the product of his cross-examination questions.

Mr. Ryle also claims that the Court prevented him from soliciting impeaching evidence on cross-examination. At trial, however, Mr. Ryle was not attempting to impeach the officers. Rather, Mr. Ryle was asking the State's witnesses questions about the underlying investigation—that topic had been excluded from trial upon Mr. Ryle's request. After Mr. Ryle asked the first officer about why the officer stopped him, the Court cautioned him that the jury may use that information against him. The Court further informed him that he had previously argued that evidence regarding his being under investigation be excluded. Mr. Ryle stated he accepted the risk, and the Court allowed him to continue with the line of questioning.[50] At no point was Mr. Ryle prohibited from

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[49] *See Revel v. State*, 956 A.2d 23, 27, 29-30 (Del. 2008) (a trial judge's prompt curative instruction is presumed to cure any error and to adequately direct the jury to disregard even improper statements of a witness); *see also Johnson v. State*, 2006 WL 3759403 (Del. Dec. 22, 2006) (police testimony that defendant was "known" to police was not prejudicial, in part because jury was immediately properly instructed). The Court gave a second curative instruction on the second day of trial, upon Mr. Ryle's objection that the officer who conducted his recorded interview mentioned that he was a drug detective. Trial Tr., Feb. 11, 2015, at 34-37; *id.* at 2-3; 20-22 (discussion of Mr. Ryle's review of the recording and its redactions).

[50] Trial Tr., Feb 10, 2015, at 65-69.

asking questions on cross-examination. Therefore, he cannot show that a new trial is warranted in the interest of justice on this ground.

V. CONCLUSION

The Court finds that Mr. Ryle has not demonstrated that the interest of justice dictates that he should receive a new trial. He cannot show how he was prejudiced by: the denial of his sudden mid-trial request for standby counsel; the Court's actions insuring he examined his recorded statement and the State's physical evidence before their admission; the State's reference to recorded statement in its opening; or the limited police testimony about the seized firearm and the fact that there was an underlying investigation. Mr. Ryle's Motion for a New Trial must therefore be **DENIED.**

IT IS SO ORDERED.

/s/ Paul R. Wallace
Paul R. Wallace, Judge

Original to Prothonotary
cc: John S. Taylor, Esquire
Alex Ryle, *Pro Se*