

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KEVIN L. HILL (aka KHALIQ QAWI AMIN),	§ § No. 101, 2008 §
Defendant Below- Appellant,	§ § Court Below—Superior Court § of the State of Delaware
v.	§ in and for New Castle County § Cr. ID No. 9607013218
STATE OF DELAWARE,	§ §
Plaintiff Below- Appellee.	§ §

Submitted: July 25, 2008
Decided: September 10, 2008

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 10th day of September 2008, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Kevin L. Hill, filed an appeal from the Superior Court's January 31, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) In 1997, Hill was found guilty by a Superior Court jury of Robbery in the First Degree, Conspiracy in the Second Degree, two counts of Murder in the First Degree, and six counts of Possession of a Firearm

During the Commission of a Felony. His convictions stemmed from a robbery on July 13, 1996 at the Great Wall Chinese Restaurant in Wilmington, Delaware, during which a restaurant employee was killed. Hill was sentenced to two life terms, plus thirty years, to be followed by two years of probation. This Court affirmed Hill's convictions and sentences on direct appeal.¹

(3) In his postconviction motion filed in the Superior Court, Hill's sole claim was that his felony murder conviction should be vacated because there was insufficient evidence presented at trial to support a finding that the killing of the restaurant employee was committed in order to "facilitate" the robbery of the restaurant.² Because Hill does not raise that claim in this appeal, it is deemed to be waived and will not be addressed by this Court.³

(4) In his appeal, Hill claims that the Superior Court abused its discretion by failing to vacate his intentional murder conviction sua sponte. Hill's claim was not presented to the Superior Court in the first instance, precluding appellate review.⁴

(5) Hill's claim is without merit in any case. While Hill argues that he cannot be guilty of intentional murder because he did not go to the

¹ *Hill v. State*, Del. Supr., No. 226, 1998, Holland, J. (June 14, 1999).

² *Williams v. State*, 818 A.2d 906 (Del. 2003); *Chao v. State*, 931 A.2d 1000 (Del. 2007).

³ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

⁴ Supr. Ct. R. 8.

restaurant with the intention of killing the employee, that is a misstatement of Delaware law. In fact, his conviction of intentional murder required only that the State prove beyond a reasonable doubt that it was Hill's "conscious object" to kill the restaurant employee.⁵ The State was not required to prove either deliberation or premeditation, since, under Delaware law, the intent to kill can be formed in no more than a moment.⁶

(6) Hill's related argument that a conviction of felony murder and a conviction of intentional murder cannot co-exist also is a misstatement of Delaware law. It is well-settled that the evidence presented by the State at trial can support both an intentional murder conviction as well as a felony murder conviction.⁷

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁵ *Cropper v. State*, Del. Supr., No. 200, 1999, Hartnett, J. (Jan. 21, 2000) (citing *Duonnolo v. State*, 397 A.2d 126, 129 (Del. 1978)).

⁶ *Id.*

⁷ *Burrell v. State*, 766 A.2d 19, 24-25 (Del. 2000); *Rush v. State*, 491 A.2d 439, 443-45 (Del. 1985).