

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

**STATE OF DELAWARE**

**v.**

**MICHAEL JONES,**  
**Defendant.**

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) **I.D. No. 9911016309**  
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**Submitted: November 23, 2004**  
**Decided: December 14, 2004**

**UPON DEFENDANT’S MOTION**  
**TO SUPPRESS EVIDENCE**  
**DENIED**

**MEMORANDUM OPINION**

**Kevin J. O’Connell, Esquire, Wilmington, Delaware, Attorney for Defendant.**  
**Jerome M. Capone, Esquire, Wilmington, Delaware, Attorney for Defendant**

**Stephen Walther, Deputy Attorney General, New Castle County, Attorney for**  
**the State of Delaware, John A. Barber, Deputy Attorney General, Attorney**  
**for the State of Delaware**

**ABLEMAN, JUDGE**

**This case involves the murders of Cedric Reinford and Maneeka Plant, and the attempted murder of Muhammed Reinford, by Darryl Page and Michael Jones. In a videotaped interview, Kim Still, Page’s girlfriend, detailed: (1) numerous statements Page made while planning the crime, (2) numerous statements Page made after the murders while Still assisted his and Jones’ escape, and (3) numerous statements that she was afraid of Page. Jones, who is being tried separately, objects to these statements on hearsay and D.R.E. 403(b) grounds. The Court finds that the vast majority of the statements fall within specific hearsay exceptions. The Court further finds that the statements relating to Still’s fear that Page would harm her are not unduly prejudicial to Jones in a D.R.E. 403(b) context. Defendant’s Motion To Suppress Evidence is therefore DENIED.**

*Facts*

**The facts relating to the murders are described in detail in the Court’s opinion of August 31, 2004.<sup>1</sup> The facts relevant to this motion concern Kim Still, and statements that she attributed to Page during an interview with police after the murders. The source of this fact recitation is Still’s interview, which is vigorously disputed.<sup>2</sup>**

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<sup>1</sup> 2004 WL 2190097 (Del. Super.).

<sup>2</sup> For simplicity’s sake, the Court has not used the qualifier “allegedly” during the fact recitation. This should not be taken as an endorsement of Still’s testimony, which remains disputed and unproven.

**Still was Page's steady girlfriend for several months before the murders. The relationship was a stormy one, and included numerous quarrels regarding Page's career as a drug dealer and both parties' infidelities. Page had physically abused Still, leading to an arrest for domestic violence. After that, Page moved most of his belongings to Cedric Reinford's house, but maintained a casual relationship with Still. Still told the police that Page had not beaten her since he had been arrested on the domestic violence charge.**

**Over the summer of 1999, Page made numerous statements to Still indicating his intent to rob Cedric Reinford. Page worked as a retail drug dealer for Reinford, who imported large drug shipments from New York City. Reinford did not pay Page because he had bailed Page out of jail for a previous charge, and expected Page to work off his debt.**

**According to Still, Page repeatedly said that he was going to rob Cedric because he was angry that Cedric was keeping the drug proceeds for himself while he (Page) was broke. Page told Still he intended to make the robbery appear to be a drug deal gone wrong, and that this would require him to shoot Cedric so he could not identify Page or seek revenge. These statements continued up until a week before the murders, when Page told Still that he intended to rob Cedric before his (Page's) birthday on November 26, 1999, so**

that he could buy himself a nice present. Page and Jones allegedly committed the murders on November 19, 1999.

On the morning of November 19, 1999, after the murders, Still received phone calls from Jones and, later, from Page. Page instructed Still to ride the train from Wilmington to Philadelphia in order to retrieve a car they had borrowed. Still arrived in Philadelphia and was picked up by Page and Jones. Page ordered Still to drive the car around the city for several hours while they waited for stores to open, because they needed to buy new clothes. During this time, she overheard Page asking Jones if he was satisfied with the night's earnings, and praising Jones' courage in the prior night's dealings. Still did not hear Page specifically mention the murders, nor did she hear Jones respond to Page's comments.

After an hour or so of driving, Still received a page from her babysitter. Still stopped at a payphone so she could call home, and, when she did so, the sitter told her that police had surrounded her house. Still became anxious and demanded to know what was going on. Page feigned ignorance. A few minutes later, Still received another page, and again called home. This time (after the police had stormed the house looking for Page) a Wilmington police detective answered, and told her that she needed to return to Wilmington

**immediately for questioning on a very serious matter. Still agreed to return home at once.**

**Still reentered the car extremely upset, and demanded that Page tell her in what he had involved her. Page refused to reveal anything, and told Still to “hold her head” and that she “didn’t know nothing” and was better off that way. Still then told Page to return the car himself. Page responded that he and Jones “can’t go to Delaware” and that he did not know when he would see or talk to Still again.**

**Around 10:00 a.m., Still dropped Page and Jones off at a Philadelphia mall. As they exited the car, Still noticed Jones carrying a black plastic bag tied in a distinctive knot. Still recognized the bag as belonging to Cedric Reinford, as she had seen Reinford bundle his cash in the same manner when he would drive to New York with Page to buy drugs. Still told the police that the bag typically held \$40,000.**

**Finally, Still returned to Wilmington, hid the borrowed car, and went home. She was immediately brought to the Wilmington police station for questioning, which turned out to be a marathon 16-hour affair. At first, Still denied any involvement with, or knowledge of, the crime, and claimed that she had not seen Page or Jones for several days. Still revealed more and more as the police confronted her with inconsistencies in her story. She repeatedly**

told the police that she wanted to help but feared Page would harm her or her children if she spoke truthfully. Still referenced Page's prior acts of domestic violence, and that she believed he was involved in other murders in New York, as reasons for fearing him. When the police threatened to charge her with obstruction of justice, Still finally broke down and told the story recited *ante*.

### *Discussion*

The portions of the interview to which Jones objects can be divided into three categories. First, Jones argues that Page's statements discussing his planning of the murders are hearsay. Second, Jones submits that Page's statements in the car during the escape are hearsay, as they occurred after any conspiracy between Page and Jones had been completed. Finally, Jones urges that Still's statements expressing her fear of Page are unduly prejudicial within the meaning of D.R.E. 403(b). The Court rejects all three of these arguments.

- A. Page's statements indicating intent to rob and shoot Cedric are present-sense mental impressions.

Still claims that Page made numerous statements before the murders, which, taken together, can be summarized as follows: "I intend to rob Cedric Reinford because he has lots of money; I'm broke; and I am angry that he is making me work off my debt. I will need to shoot Reinford so that he cannot

**identify me to the police or seek revenge. I will murder Reinford before November 26, so that I can buy myself a nice birthday present. I have tried to rob him before, but did not do so because I thought it too dangerous to attempt the enterprise alone. Now, however, I have everything in place to complete the murder by November 26.”**

**D.R.E. 803(3) reads:**

**The following are not excluded by the hearsay rule, even though the declarant is available as a witness ... (3) Then existing mental, emotional, or physical condition. A statement of the declarant’s then existing state of mind, emotion, sensation or physical condition (such as *intent, plan, motive, design*, mental feeling, pain and bodily health, but not including a statement of memory or belief ... (emphasis added).**

**By the plain language of the rule, Page’s statements of his intent to commit the crime cannot be excluded on hearsay grounds. Notwithstanding my reading of the rule, I am also required to consider the five factors outline in *Derrickson v. State*<sup>3</sup>:**

**1) The statement must be relevant and material; (2) It must relate an existing state of mind when made; (3) It must be made in a natural manner; (4) It must be made under circumstances dispelling suspicion; (5) It must contain no suggestion of sinister motives.**

**Page’s statements revealing when and how he intended to murder Reinford are obviously relevant, and there appears to be no dispute that they indicated an existing, rather than a past, state of mind at the time they were made. A man telling his lover that he is angry and going to take revenge on**

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<sup>3</sup> 321 A.2d 497, 503 (Del. 1974).

the man that wronged him is a natural statement made under circumstances dispelling suspicion. While the crime itself was undeniably sinister, the focus of the fifth prong of the *Derrickson* test is on Page's motive for making the statements.<sup>4</sup> Nothing suggests that Page made the statements to mislead Still, or create an alibi, or lure her into the crime, or any of the myriad possible sinister motives one could concoct. Instead, it seems that Page made the statements because he was proud of his scheme and wanted to brag to his girlfriend. That is not grounds for suppression under any test, including that elucidated in *Derrickson* and D.R.E. 803(3).

A closer call in this analysis concerns Page's statements that he had wanted to rob Cedric in the past but had never followed through because he was alone. Viewed alone, these appear to be backward-looking, memory-based statements of the type the Delaware Supreme Court indicated must be excluded in *Capano v. State*.<sup>5</sup> The objection, however, ignores the context of the statements. Taking Still's recounting of the statements together, and eliminating the interruptions of the questioning officer, Page said he had been afraid to kill Cedric before, but now would do so before his birthday. The jury could reasonably infer that this statement meant that he had solved the one problem keeping him from carrying out the killing; i.e. securing a partner

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<sup>4</sup> *Id.* at 504.



to assist him. The statement therefore looks forward to being able to kill Reinford, not just back to the times when Page was unable to do so.

Moreover, Page said “he felt like a punk” because “it had been out in the air that he was supposed to rob [Cedric] since the summer time.” Page’s mental feeling -- embarrassment that he had not yet committed the murder of which he had been boasting because he was afraid to do it alone -- is a present-sense mental impression within the meaning of D.R.E. 803(3). These statements meet the *Derrickson* standard for the same reasons as those already discussed.

Jones’ reliance upon *Crawford v. Washington*<sup>6</sup> is misplaced. *Crawford* clarifies the Confrontation Clauses’ prohibition against out-of-court testimonial statements. The Supreme Court made it abundantly clear in that case, however, that it was not attempting to regulate non-testimonial statements: “Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers’ design to afford States flexibility in their development of hearsay law...”<sup>7</sup>

While the Supreme Court did not specifically define “testimonial” in *Crawford*, the Court can ascribe no meaning to the word that would include

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<sup>5</sup> 781 A.2d 556 (Del. 2001).

<sup>6</sup> 124 S. Ct. 1354 (2004).

<sup>7</sup> *Id.* at 1374.

**Page's statements. Page did not confess his plan to murder Cedric before a judge, magistrate, or police interrogator<sup>8</sup>; he bragged about it to his lover over a course of several months. It is true that Still revealed the statements in a testimonial setting, but she will be available to testify, eliminating any Confrontation Clause problem. *Crawford* therefore does not apply.**

**B. Page's remarks during the escape are admissible as statements of a co-conspirator in furtherance of the conspiracy.**

**Still told the police that Page made various statements during the escape, which can be summarized as, "Jones, are you satisfied with last night's take? You are the man. Still, hold your head on straight. You and the police don't know anything. I only asked you to help with the car because Jones and I can't go to Delaware."**

**D.R.E. 801(d)(2)(E) provides that, "[a] statement is not hearsay if [it is] ... (E) a statement by a co-conspirator of a party during the course and furtherance of the conspiracy." The test for these co-conspirator statements was further defined in *Harris v. State*<sup>9</sup> as follows:**

**A statement qualifies as an [hearsay] exception if the offering party can show by a preponderance of the evidence that: a conspiracy existed; the co-conspirator and the defendant against whom the statement is offered were members of the conspiracy; and the statement was made during and to further the conspiracy.**

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<sup>8</sup> The Supreme Court cites these forums as examples of where testimonial statements may be found. *Crawford*, 124 S. Ct. at 1374.

<sup>9</sup> Del. Super., 695 A.2d 34 (1997).

**The State has overwhelming evidence that a conspiracy existed between Page and Jones. In addition to Still, Muhammed Reinford will testify about Page and Jones' conversations as they were shooting him and Maneeka Plant. The only question is whether the conspiracy was still in force when Still was driving the get-away car around Philadelphia.**

**The evidence does not, as the defense argues, show that the conspiracy had finished at the time of the Philadelphia escapade. The State's theory of the case is that Page carefully planned to murder Cedric, and lured Jones to Delaware to be the triggerman. Jones then shot three people, two of whom were innocent bystanders, in order to find Cedric's bag of drug money. Page's motive was that Cedric was keeping him broke, while Jones had no motive other than greed. It is simply inconceivable that either man would have considered the job complete without receiving their share of the money. Still's statement indicates that the bag of money remained tied in its distinctive knot when she left Page and Jones in Philadelphia, showing that it had not yet been divided between the conspirators. Page's post-murder statements were thus made during the conspiracy.<sup>10</sup>**

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<sup>10</sup> Page's statements to Still were also "in furtherance of" the conspiracy within the meaning of D.R.E. 801(d)(2)(E). Specifically, Page was attempting to calm Still down so that she would continue to aid their escape, and to get her to return the car to Delaware so the police would be unable to track where they had gone. Page was successful in this aim; Still did what she was told. The statements therefore had a real effect upon the outcome of the conspiracy, and can only be considered to be in furtherance thereof. Moreover, the Delaware Supreme Court has

**Jones relies upon *Reyes v. State*<sup>11</sup> for the proposition that, “[g]enerally, a conspiracy terminates upon accomplishment of the principal objective unless evidence is introduced indicating that the scope of the original agreement included acts taken to conceal the criminal activity.” While that concept is true, it does not help the defense in this case. In *Reyes*, two drug dealers murdered two other drug dealers who shortchanged them on a marijuana buy. The defendants beat the victims in their basement, and were overheard by neighbors, who complained. The defendants then dragged the victims into a park, shot, and buried them. A few days later, one of the conspirators told the neighbors they had overheard a scuffle in the basement, during which someone who insulted his lady-friend received his comeuppance. The Supreme Court found this statement, although hearsay, to be admissible. Even though the statement occurred days after the murders, it was made in order to conceal the crime, and were therefore “in furtherance of” the conspiracy.**

**If the statements in *Reyes* were admissible, the post-murder statements in this case certainly are. Page made the statements mere hours, not days, after the crime, while still attempting to escape, and before the ill-gotten gains were**

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held that statements made after a robbery but before division of the proceeds are *per se* in furtherance of the conspiracy. *Hackett v. State*, 734 A.2d 641 (1999) (unpublished opinion).

<sup>11</sup> Del. Supr., 819 A.2d 305 (2003).

divided. The other case upon which Jones relies, *Swan v. State*<sup>12</sup>, involves statements of conspirators attempting to shift blame for their crimes onto their co-conspirators. Page's comments in the car are not of that type; they do not attempt to shift blame and were not made under circumstances, like a police interview, which would indicate untrustworthiness. In short, Jones offers no valid reason to suppress these statements.

C. **Still's statements indicating her fear of Page are relevant and not unduly prejudicial to Jones.**

In her interview, Still said numerous times that she wanted to be honest with the police, but she was scared for herself and her children. Her reasons were that Page had abused her in the past, that Page said he would kill her if she ever crossed him, and that she believed him to be involved in other murders in New York. The State has agreed to redact any mention of the other murders, leaving at issue the other two types of statements, as well as the times that Still expresses that she is frightened.

D.R.E. 403(b) allows the exclusion of otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair

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<sup>12</sup> 820 A.2d 342, Del. Supr. (2003).

prejudice.” The determination of unfair prejudice rests within the sound discretion of the trial judge.<sup>13</sup>

The probative value of Still’s statements of fear is that they explain why she led the police on an hours-long goose chase before telling the whole story. The State is justifiably concerned that Still will not appear credible unless it is shown that she believed, at least at first, that she had to lie to protect herself and her children. The “fear statements” put the interview in context, explaining Still’s hesitations and awkward responses. These statements have substantial probative value.

Jones’ motion offers no particular argument as to why the statements affect him, and implies that the unfair prejudice inherent within them speaks for itself. The Court disagrees. The only prejudice Jones will suffer from admitting these statements is they highlight that his friend -- Page -- is a bad person, and perhaps taint Jones by his association with him. But nothing in Still’s statement indicates that Jones was ever violent or even rude to her, or that Jones ever knew of Page’s threats and violence, or the fear that he caused Still. There is no reason for the jury to hold Jones responsible for Page’s other bad acts, and little danger it will do so.

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<sup>13</sup> *Williams v. State*, Del. Supr., 494 A.2d 1237 (1985).

**Moreover, it is impossible to tell the story of this case without revealing that everyone involved, except Muhammed Reinfeld, is a bad person. Cedric, Page, and Jones were members of a violent drug gang. The girlfriends, Still and Plant, accepted, condoned, and at times assisted the gang's nefarious activities. One more indication of Page's bad character, that he was particularly violent and threatening toward Still, is not likely to result in any considerable increase in prejudice against him, let alone to Jones. Whatever minimal increase in prejudice that does occur will be outweighed by the probative value of Still's testimony. The statements relating to Still's fear of Page are therefore admissible.**

### ***Conclusion***

**Jones has made dozens of objections to over a hundred of Still's answers during the police interview. The Court sees little to be gained by addressing each of these objections individually. This "forest-level" opinion should resolve most of the issues so that the parties can determine the appropriate redactions. The Court will address any lingering disagreements regarding Still's statements as they may arise.**

**Because the statements attributed to Darryl Page by Kim Still during her police interview fall within specific hearsay exceptions, Jones' Motion To Suppress them is hereby DENIED. Because Kim Still's statements indicating**

**her fear of Darryl Page are not unduly prejudicial to Michael Jones,  
Defendant's Motion To Suppress them is also DENIED. The State shall create  
a videotape of the interview redacted in accordance with this Opinion.**

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

**cc: Kevin J. O'Connell, Esquire  
Jerome M. Capone, Esquire  
Stephen Walther, Deputy Attorney General  
John A. Barber, Deputy Attorney General  
Prothonotary**