

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEE TURNER,	§
	§ No. 700, 2013
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Case Number 1206022694A
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: May 28, 2014

Decided: May 29, 2014

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

**O R D E R**

This 29th day of May 2014, it appears to the Court that:

1) The defendant-appellant, Lee Turner (“Turner”), appeals his sentence following a guilty plea in the Superior Court to Manslaughter and Possession of a Firearm During the Commission of a Felony. The judge sentenced Turner to ten years at Level V supervision.

2) Turner raises one claim on appeal. He contends that his due process rights were violated when the prosecutor made remarks at sentencing that were factually inaccurate. The record does not support Turner’s argument. Therefore, the judgments of the Superior Court must be affirmed.

3) In June 2012, Wilmington Police received a report of gun shots around Fly 365, a clothing store on West Fourth Street. Officers found two victims in the back alley, one shot in the chest and one shot in the stomach. The victim shot in the chest later died at Christiana Hospital from his injuries.

4) Officers later learned that Turner was the co-owner of Fly 365 and that his store had been broken into earlier that day. After being alerted to the earlier break-in, Turner drove to Fly 365. While Turner was cleaning up the store, a number of youths snuck back into the store. Turner shot at the intruders and left the scene.

5) Police located Turner three days later and obtained a search warrant for his residence. Police interviewed Turner, during which time Turner complained about officers harassing him and his family and contended that he had nothing to hide. Because he was not under arrest at the time, police were only able to conduct a short interview and allowed Turner to leave.

6) Turner was later indicted on one count of Murder in the First Degree, Attempted Murder in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony, (“PFDCF”), and one count of Possession of a Firearm by a Person Prohibited. Turner entered into a plea

agreement with the State in which he pleaded guilty to Manslaughter and PFCDF in exchange for the dismissal of the remaining charges and a favorable sentence recommendation (seven years). The Superior Court accepted Turner's guilty plea and sentenced him to ten years at Level V, suspended after five years, for the Manslaughter charge and five years at Level V for the PFCDF charge. In imposing sentencing, the Superior Court stated:

Mr. Turner, . . . this is a hard case, because you are someone who . . . at one point in time [we] would hope to hold up as an example of a kid who did it all wrong . . . and, then, turned it all around and had it all going for him: Family, business, successful, doing it the right way. And in a split second, you kind of turned it all back . . . .

And I can understand the frustration that you probably were feeling that day. You had been robbed and the store was in shambles and you were cleaning it up and what appeared to be the same people were coming back to do it again. The unfortunate thing is how you reacted to that. And as a result, you took someone's life. You shouldn't have had the gun in the first place, which led to the firearm charge which I have to impose the five-year sentence on.

So, that brings me to the manslaughter charge and, in essence, the reckless killing of someone else.

It's a hard, hard sentence for me because those types of offenses are normally ones that I would sentence longer for. But I have to give you the recognition of what you've done and how you turned your life around . . . . I don't know why this young man had decided to come in your store the way it happened. He certainly didn't come in the front door, and he certainly is coming in having – what appeared to have been

ransacked your place before. It still, however, doesn't justify shooting him. There's other ways to handle this. And you, I'm sure, recognize that and – but the event of that day kind of lives with you and will live with you forever.

So I've tried to craft a sentence to justify in my mind what you did that day, but at the same time punish you for, in essence, taking someone else's life.

7) In this appeal, Turner contends that his due process rights were violated by factually inaccurate statements made by the prosecutor at sentencing. At no point during the sentencing hearing did Turner or his counsel object to the State's comments, otherwise dispute the accuracy of the State's comments, or claim that the court imposed a sentence based on false information.

8) Because Turner failed to object to the prosecutor's statements at the sentencing hearing, our review is plain error.<sup>1</sup> Under the plain error standard of review “the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”<sup>2</sup> Plain error review is also limited to “material defects which are apparent on the face of the record; which are basic, serious and fundamental

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<sup>1</sup> *Turner v. State*, 957 A.2d 565, 574 (Del. 2008) (citing Supr. Ct. R. 8; *Czech v. State*, 945 A.2d 1088, 1097 (Del. 2008)).

<sup>2</sup> *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citing *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982)).

in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.”<sup>3</sup>

9) Appellate review generally ends upon determination that the sentence is within the statutory limits prescribed by the legislature.<sup>4</sup> However, a sentencing court abuses its discretion if it sentences on the basis of inaccurate or unreliable information.<sup>5</sup> The due process clause of the Fifth Amendment prohibits a criminal defendant from being sentenced on the basis of information which is either false or which lacks minimal indicia of reliability.<sup>6</sup>

10) Material false assumptions as to any facts relevant to sentencing render the entire sentencing procedure invalid as a matter of due process.<sup>7</sup> In *Townsend v. Burke*, the United States Supreme Court found a due process violation where the defendant was sentenced without counsel after a guilty plea, because the judge relied on “assumptions concerning his criminal

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<sup>3</sup> *Id.* (citing *Bromwell v. State*, 427 A.2d 884, 893 n. 12 (Del. 1981)).

<sup>4</sup> *Ward v. State*, 567 A.2d 1296 (Del. 1989).

<sup>5</sup> *Mayer v. State*, 604 A.2d 839 (Del. 1992).

<sup>6</sup> *See, e.g., Mayer v. State*, 604 A.2d 839, 843 (Del. 1992) (explaining that “the due process clause of the Fifth Amendment prohibits a criminal defendant from being sentenced on the basis of information which is either false or which lacks minimal indicia of reliability”); *see also State v. Leroy*, 1993 WL 19629, at \*7 (Del. Super. Ct. Jan. 14, 1993) (“Procedural due process under the 14th Amendment to the U.S. Constitution forbids a sentence from being determined on the basis of ‘information which is materially untrue or, if not shown to be false, to be so lacking in indicia of reliability as to be of little value.’” (quoting *Mayer v. State*, 604 A.2d at 844)).

<sup>7</sup> *United States v. Robin*, 545 F.2d 775, 779 (2d Cir. 1976) (citing *Townsend v. Burke*, 334 U.S. 736 (1948)); *United States v. Tucker*, 404 U.S. 443 (1972).

record which were materially untrue.”<sup>8</sup> This Court has held that the sentencing judge errs when she sentences a defendant based on false or inaccurate information.<sup>9</sup>

11) In this case, Turner entered guilty pleas to Manslaughter and Possession of a Firearm by a Person Prohibited. The State agreed to cap the recommendation to seven years of incarceration at Level V. When addressing the judge at sentencing, the prosecutor stated that Turner “lied to the police about where he was and what he did.” Furthermore, the prosecutor went on to state that the defendant “never showed an ounce of remorse” when saying in open court:

The State stands by its recommendation at the time, to seven years, but the defendant should get no less than those seven years. It would be injustice if we ignored the fact that the defendant was a person prohibited from having firearms when he armed himself that day and went into his store. It would be injustice to ignore the fact that the defendant fired that weapon, the weapon he wasn’t supposed to have, at least three times at those kids. It would be injustice to ignore the fact that the defendant walked out of his store, walked by [the victim], who was laying in that alleyway bleeding from his wounds, got in his car and fled the scene. *And we shouldn’t ignore the fact that the defendant, when finally the police caught up to him, lied to the police about where he was and what he did. And during that interview, he never showed an ounce of remorse.* The State does stand by its recommendation, but the defendant should not get any less than the seven years that we have recommended before.

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<sup>8</sup> *Townsend v. Burke*, 334 U.S. 736, 740–41 (1948).

<sup>9</sup> *Hamilton v. State*, 1987 WL 4687, at \*1 (Del. Nov. 12, 1987) (ORDER).

12) According to Turner, these two italicized sentences are false. Turner explains that during allocution that he sincerely apologized to the victim's family and that the police never asked him about his location prior to the shooting.

13) The State's response to Turner's characterizations of the contested sentences is that the statements were neither false nor incendiary. The State points to the transcript of Turner's police interview as evidence to support the prosecutor's statements. For example, the statement that Turner lied to police is based on Turner's statements including, "I don't know why I'm here," "I have nothing to hide," and "I don't know anything about [anything]." The State argues that Turner's claims that he had nothing to hide and that he did not know about the shooting were not truthful.

14) As to the second statement, that Turner did not show remorse, the State contends that this is also based on Turner's behavior during his interview. At the time, Turner never exhibited any regret or guilt for the children that he shot. Instead, he continually complained that police were unfairly investigating him and harassing his family. Turner further exclaimed, "if this is something, which I know it's nothing, because I have nothing to hide, then I mean, it's nothing." Based on these statements, the

State submits that the logical inference was that Turner did not exhibit any remorse or compunction.

15) It is well-settled law that “prosecutors may not misrepresent the evidence.”<sup>10</sup> In this case, the prosecutor’s statements at issue are legitimate inferences from the statements Turner made during his police interview. As a result, Turner’s due process claim is without merit.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>10</sup> *Flonnory v. State*, 893 A.2d 507, 540 (Del. 2006) (citing *Hunter v. State*, 815 A.2d 730, 735 (Del. 2002)).