IN THE SUPREME COURT OF THE STATE OF DELAWARE

LESHAWN WASHINGTON,	§	
	§	No. 376, 2012
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	Cr. I.D. No. 1101021242
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 27, 2013
Decided: March 12, 2013

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

This 12th day of March 2013, it appears to the Court that:

1) The defendant-appellant, Leshawn Washington ("Washington"), appeals from final judgments of the Superior Court that were entered following a jury trial, where he was found guilty of four counts of Assault in the First Degree, two counts of Assault in the Second Degree, twelve counts of Possession of a Firearm During the Commission of a Felony ("PFDCF"), and six counts of Reckless Endangering in the First Degree.

2) Washington raises one claim on appeal. Washington argues the Superior Court abused its discretion by permitting the introduction of witness Anthony Stanley's prior out-of-court statement pursuant to title 11,

section 3507 of the Delaware Code ("section 3507"). We have concluded that argument is without merit.

3) In January, 2011, JoeQwell Coverdale, Washington, and several friends went to First State Lanes, a bowling alley in New Castle County. Coverdale and one friend stayed in the parking lot smoking marijuana, while Washington and the others went into the bowling alley.

4) Sometime after Washington entered the bowling alley, Officer Jonathan Yard of the New Castle County Police Department, who was on patrol, decided to stop and go into the bowling alley. After Officer Yard arrived, he heard multiple gun shots fired inside the building. A great many screaming patrons began streaming out from the bowling alley. Six people were found wounded inside the bowling alley.

5) The record reflects that Washington was in possession of a handgun that evening. Later that evening, Washington said to Coverdale that he—Washington—had seen several people he "had a beef with" and "I think I got him, I think I hit one of them."

6) Anthony Stanley, one of the shooting victims, was interviewed on videotape by Detective Stephen Legenstein ("Detective Legenstein"). Stanley told the Detective that he was in a dispute with Washington, and this disagreement led to the shooting. Stanley identified Washington as the

person who shot him, picking him out from a photo array. Stanley admitted he was shooting at Washington as well.

7) Washington was charged with four counts of Assault in the First Degree, two counts of Assault in the Second Degree, twelve counts of PFDCF[1] and six counts of Reckless Endangering in the First Degree. Stanley was also charged with several crimes for his role in the shooting.

8) During Washington's trial, the State called Stanley to the stand. After the third question on direct examination, a question about Stanley's nickname, Stanley attempted to "plead the fifth." After a brief sidebar conference, the State then engaged in the following colloquy with Stanley.

> Q: Okay. Are you here from an incident stemming from the First State Bowling Alley?
>
> A: I don't get your question.
>
> Q: Okay. Let me back up. Were you shot recently?
>
> A: Yes.
>
> Q: Were you shot while you were at the First State Lanes Bowling Alley?
>
> A: Yes.
>
> Q: Okay. Did you talk to Detective Legenstein about getting shot and the incidents from the First State Bowling Alley?

[1] Washington was originally charged with thirteen counts of PFDCF. One charge was dropped before the trial.

A: Yes.

Q: When you talked to him, was it voluntary?

A: Yes.

Q: Because he *Mirandized* you; in other words, read you your rights, and you said you talked to him, right?

A: Yes.

Q: Okay. When you talked to the detective, did you tell him the truth?

A: No.

The trial judge then held another sidebar. The State requested to call Detective Legenstein to the stand and play the videotaped interview pursuant to section 3507. The trial judge determined the out-of-court statement was made voluntarily, and permitted the State to call Detective Legenstein, without objection from defense counsel. After the videotape was played, the State recalled Stanley back to the stand over defense objection and asked him in detail about the videotaped statement.

9) The jury convicted Washington on all counts. He was sentenced to eighty-one years of incarceration at Level 5, suspended after forty-three years. This appeal followed.

10) The record reflects that Washington never objected to the State playing the videotaped statement. Accordingly, although Washington

asserts there was an abuse of discretion, we must consider his claim under the plain error standard of review. Plain error is "limited to material defects which are apparent on the face of the record . . . and which clearly deprive [a criminal defendant] of a substantial right, or which clearly show manifest injustice."[2] To meet this standard, "the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the *trial* process."[3]

11) "The draftsmen of section 3507 expressly contemplated a circumstance where a witness voluntarily gives a prior statement but later denies the substance of the statement at trial."[4] Title 11, section 3507 states in relevant part:

> (a) In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.
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> (b) The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

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[2] *Baker v. State*, 906 A.2d 139, 150 (Del. 2006) (quoting *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)).
[3] *Id*.
[4] *Collins v. State*, 56 A.3d 1012, 1018 (Del. 2012) (citing *Johnson v. State*, 338 A.2d 124, 127 (Del. 1975)).

In *Woodlin v. State*,[5] we re-iterated the foundational requirements for the admission of a section 3507 statement:

> The basic procedure for admitting a statement under section 3507 was first announced . . . in *Keys v. State* [337 A.2d 18 (Del. 1975)]. In [*Keys*], we held: "In order to offer the out-of-court statement of a witness, the Statute requires [that] the direct examination of the declarant . . . [touch on] both the events perceived or heard and the out-of-court statement itself." Three weeks later, we supplemented *Keys* in *Hatcher v. State* [337 A.2d 30 (Del. 1975)], where we addressed another foundational requirement for the admission of a witness' statement pursuant to section 3507–voluntariness . . . . In *Ray v. State* [587 A.2d 439 (Del. 1991)], we also explained (and cited *Johnson*) in holding in order to conform to the Sixth Amendment's guarantee of an accused's right to confront witnesses against him, the declarant must also be subject to cross-examination on the content of the statement as well as its truthfulness.[6]

12) Washington contends that the trial judge erred by finding Stanley's initial testimony "touched on" the shooting. Washington supports his argument by citing to our decision in *Blake v. State*.[7] The facts in *Blake* are distinguishable from this case. In *Blake*, the State only asked the testifying declarants whether they recalled the events and whether they voluntarily spoke to the police.[8] In this case, the State asked Stanley about

[5] *Woodlin v. State*, 3 A.3d 1084 (Del. 2010).
[6] *Id* at 1087-88 (Del. 2010) (internal citations omitted)).
[7] *Blake v. State*, 3 A.3d 1077 (Del. 2010)
[8] *Id*. at 1081.

the shooting itself, not just if he recalled the events and whether he gave a statement.

13) In *Feleke v. State*,[9] we held that the testimony of rape victim who testified that a defendant did "something bad" to her and that there was a "touching" was sufficient to meet the "touched on" requirement of section 3507.[10] Stanley testified he was at the bowling alley and was shot while there. Though he did not testify as to every detail of the attack, his testimony clearly "touched on" the events he perceived. It was not plain error for the trial judge to allow the videotaped interview into evidence under section 3507.

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

BY THE COURT:

/s/ Randy J. Holland
Justice

[9] *Feleke v. State*, 620 A.2d 222 (Del. 1993).
[10] *Id*. at 227.