

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE, :  
 : I.D. Nos. 0307019740 and  
 v. : 0308000827  
 :  
 ANTWAYNE WIGGINS, :  
 :  
 Defendant. :

Oral Argument: January 23, 2004  
Memos Submitted: February 13, 2004  
Decided: February 24, 2004

**ORDER**

Upon the State's Motion for Handwriting Exemplar. Granted.

James J. Kriner, Esquire, Department of Justice, Dover, Delaware, attorneys for the State of Delaware.

Beth D. Savitz, Esquire of Hudson, Jones, Jaywork & Fisher, Dover, Delaware, attorneys for the Defendant.

WITHAM, J.

***Introduction***

Before this Court is the State's motion to order the Defendant, Antwayne Wiggins, to provide a handwriting exemplar. The Defendant was indicted on two sets of charges. The Dover Police Department is in possession of a handwritten letter allegedly written by the Defendant and the State is requesting a handwriting exemplar from the Defendant to assist the jury in determining the facts of the case.

***Contentions of the Parties***

Defendant contends that Article I, Section 7 of the Delaware Constitution of 1897 provides in pertinent part that the accused "... shall not be compelled to give evidence against himself or herself . . ." This language is very similar to the Fifth Amendment of the United States Constitution which provides in pertinent part that an accused shall not "be compelled in any criminal case to be a witness against himself . . ." Defendant is correct in quoting the pertinent parts of each Constitution. Defendant then argues that because Article I, Section 7 referred to evidence rather than witnesses, the State constitution's protection is more extensive than the Fifth Amendment.

The State argues that compelling a handwriting exemplar does not violate Defendant's privileges against self-incrimination under Article I, Section 7. It is well settled, as admitted by the defense, that the language in the Fifth Amendment does not prohibit the State from obtaining a handwriting exemplar.

***Discussion***

The U.S. Supreme Court has consistently held that ordering a defendant to

produce a handwriting sample does not violate his Fifth Amendment privilege against self-incrimination.<sup>1</sup> “A mere handwriting exemplar, in contrast to the content of what is written, like the voice or body itself, is an identifying physical characteristic outside its protection.”<sup>2</sup>

While the Defendant is correct that *State v. Flanagan*<sup>3</sup> is a limited decision, not directly dealing with the issue at hand, the Delaware Supreme Court has previously interpreted Article I, Section 7 as “. . . declaratory of the common law rule and as such embraces only a prohibition by compulsory oral examination in the equivalent thereof of an accused person . . . from being required to incriminate himself . . .”<sup>4</sup> This view was later approved in 1963 in the *Durrant*<sup>5</sup> case and lately followed in this Court in *State v. Robinson*<sup>6</sup> where President Judge Ridgely held that Article I, Section 7 of the Delaware Constitution has been interpreted to be coextensive with that of the Fifth Amendment and has been held to apply only to testimony evidence.

### ***Conclusion***

Therefore, the State’s motion to order Defendant to submit a handwriting

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<sup>1</sup> *Gilbert v. California*, 388 U.S. 263, 266-267 (1967). *See also Schmerber v. California*, 384 U.S. 757 (1966).

<sup>2</sup> *Id.* at 266-267.

<sup>3</sup> 1986 WL 1272 (Del. Super. Ct. 1986).

<sup>4</sup> *State v. Smith*, 91 A.2d 188, 192 (Del. 1952).

<sup>5</sup> *State v. Durrant*, 188 A.2d 526 (Del. 1963).

<sup>6</sup> *State v. Robinson*, 1994 WL 684483 (Del. Super. Ct.1994).

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exemplar is *granted*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
J.

WLW/dmh  
oc: Prothonotary  
xc: Order Distribution  
File