

# **OPERATION "SAFE" STREETS:**

How Delaware's Most Secretive Police Force Plays Fast & Loose With Our Communities

Story By: Lauren Gill

Editing By: Jay A. Fernandez, Reviser Editorial

Fact-Checking By: Mary Mathis

Photos By: David Heitur, Dream Art Studio

This Report is Available Online at ACLU-DE.org/OSS





A row of homes in Wilmington shows the home where Armani Congo was targeted and arrested by Operation Safe Streets officers. Photo by David Heitur of Dream Art Studio.

Around 9 pm on October 29, 2020, Sharee Congo was relaxing on a couch on the covered porch of her red brick townhouse in the Browntown section of Wilmington. She chatted with her eldest son, 22-year-old Armani Brown-Congo, who sat across from her smoking a Black & Mild cigar on the brick wall that bordered their property. On Sharee's lap was a 9mm Beretta that she'd recently purchased from a local gun shop for protection after two of her neighbors were shot and someone threatened to pull a gun on her.

Despite this, she and Armani agreed that life was good.

Though he'd recently been incarcerated while awaiting trial for unlawfully carrying a gun, a charge he disagreed with, he'd taken a plea deal a few months earlier so he could get out of prison and return home. Since his teenage years, he'd had trouble with the law, including convictions for three misdemeanors and a series of probation violations, but he was trying to

turn a corner. Armani was working jobs at a mail processing plant and an events company, saving up his money to purchase a car and move into an apartment of his own. In his spare time, he had taken an interest in working out. He'd been doing well on probation and was due to be released in eight months. Though Halloween was in two days, the house was bare of decorations; Armani's probation officer had forbid them.

Sharee's boyfriend was supposed to have come over after he finished watching the Atlanta Falcons game at TGI Fridays, but eventually she shoved the Beretta down between the armrest and the couch cushion and went upstairs to call him. Armani, who had grown thirsty, followed behind her to the kitchen for a drink then walked back towards the porch. Sharee was scrolling through Facebook in her bedroom when she suddenly heard a loud boom, and then Armani screaming for her.

#### "Yo, Mom, they just shot me, they shot me!" Sharee heard Armani yell.

A moment later, Armani appeared at the open door of her bedroom holding his side and balancing against a wall as he dragged himself in. He'd been shot by a taser, the weapon's barbed darts penetrating his body. Sharee quickly shut the door and held it. A stampede of footsteps clomped up the stairs, and she heard a male voice yell, "Kick the fucking door in."

Sharee's other four children, Gionni, 20, Sy'ayre, 12, and Makhai and Kahsai, both 9, and her three-year-old granddaughter, Alesha, were also in the house. In that moment, pressing herself against the door in terror, Sharee thought about how she couldn't protect them. She feared that whoever was outside the door was going to kill everyone in her family.

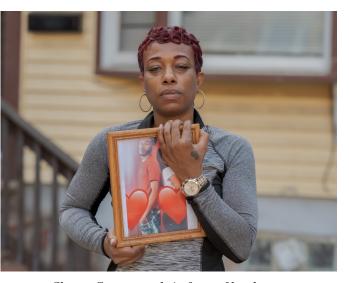
But they would have to go through her first, she thought. She stepped back from the door, and it flew open to reveal at least half a dozen men in dark clothes and big, puffy vests cramming the hallway. One man immediately entered the room and slammed Armani against Sharee's dresser, then to the wall, and

finally to the ground. After reading the writing on one of their vests, she realized the men were police, but she had no idea why they were in her house. The officer punched Armani in the face again and again and again. Armani cried out for help. Grabbing her phone off the bed, Sharee told the officers she was going to record—her only defense against them—but another officer ripped it from her hand saying, "You're not fucking recording shit." A tug-of-war ensued that ended with Sharee toppling into her dresser and her phone in the officer's hand.

They pulled her from the room, but she could still hear Armani's cries. Feeling helpless, Sharee begged the officers to call an ambulance; she didn't want her son to die on the bedroom floor. She had no idea why they were there, or what she could do. She couldn't stop crying and yelling.

"Shut the fuck up, nobody is going to do nothing to your son," an officer barked, then said, "Man, fuck this shit," and snapped Sharee's wrists in handcuffs.

He walked her backwards down the steps until they reached a landing, then without warning, pushed her down the rest of the stairs. Without the use of her arms to break the fall, she twisted her body, praying that she wouldn't smash her face. Alesha watched her grandmother crash to the floor in



Sharee Congo stands in front of her home holding a photo of her son, Armani. Photo by David Heitur of Dream Art Studio.

pain. "Don't do that to my Mom-Mom," she cried, as Gionni screamed and cried nearby.

Sharee asked for the officer's name; he told her it was Officer Joseph Scioli.

The squad of officers marched Armani downstairs past her in handcuffs. They'd found the gun on the porch, and though Sharee told them it was hers and offered to show them her paperwork, the officers refused to look. "I don't want to see all that," one officer told her. They loaded Armani into a car and drove off.

Sharee looked around, breathing in the sudden quiet. Her family was distraught (Sy'ayre had been downstairs when Armani was tased and ran up to his bedroom, where he watched the rest of the incident through a crack in his

door), and her home was in shambles—the bedrooms had been "ransacked," as she put it. **It looked like the work of burglars, not the people who were supposed to catch them.** The next morning, Sharee's leg was swollen from Scioli pushing her down the stairs; bruises had begun to form.

Months later, on a cool morning in March 2021, Sharee was still shaken by the incident. Sitting in the dining room of her home, she described the traumatic evening as tears fell under the blue surgical mask she wore to protect against COVID-19. "I still don't even know why they came here," she said. "What was their reason for coming here?"

Sharee found out after the arrest that the officers had taken Armani to the Wilmington police station on Walnut Street after refusing him a trip to the hospital; eventually, an officer removed the taser barbs from his skin. Because they'd found Sharee's gun on the porch, he

was being held on related charges: violating probation, unlawful possession, and resisting arrest.

She also found out who exactly it was that had stormed her home and terrorized her family: the Wilmington Police Department's Operation Safe Streets (OSS), a partnership between police officers and probation officers for patrolling people on probation. Sharee claimed that they never identified themselves as OSS during the incident at her home. Their targeting of Armani that night remained a mystery since he was home by his court-mandated curfew, but their extreme tactics were well known around the neighborhood. The OSS unit had become so notorious that the city's Black residents had learned to avoid it at all costs.

In the aftermath of her ordeal with them, Sharee was consumed with indignant questions about their hostile behavior: "Why was you all in my house? Why did you all do the things you did to me? To my son?" she wanted to ask them.

After what they had witnessed, Sharee's twins struggled to sleep. Sy'ayre refused to go downstairs for two months, having watched the officers tase Armani. Sharee had to start taking medications to fall asleep.

"It's still hard for me to talk about," she said. "I have nightmares. I still hear my son's screams for help. They traumatized the whole household, and they don't even care. They don't think about the effect it has on families, on individuals." After a pause, she added, "We suffer every day."



Wilmington Police Department, which leads Wilmington's Operation Safe Streets, sits on the corner of North Walnut and East 4th Streets in Wilmington, Delaware. Photo by David Heitur of Dream Art Studio.

Operation Safe Streets was launched in June 1997 after a significant increase in shootings that Wilmington's leaders and law enforcement struggled to contain. Its central philosophy—policing people on probation more aggressively will curb crime—was based on a 1996 state-sponsored study showing that a majority of those involved in shootings had prior felonies or arrests for drugs and weapons.

In theory, the program's structure was simple: local police officers assigned to the OSS unit would pair up with Delaware

Department of Correction (DOC) probation officers to check on people to make sure that they were following the rules of their probation. That could include curfew checks, traffic stops, and home inspections. Probation already requires a level of surveillance. Under official DOC probation policy, the degree of supervision depends on where the court assigns the person in a tiered system based on the severity of the crime and the potential ongoing danger to the community. Levels I and II are the least restrictive, requiring infrequent communication and check-ins with the assigned probation officer. Level III typically compels those on probation to check in at least weekly and stick to designated curfew restraints, along with whatever additional conditions the court imposes. This is the tier that OSS is ostensibly mandated to target, though they also regularly patrol the lower tiers because there is no

standardized criteria across agencies for whom the units are allowed to patrol.¹ (The top probation tier, Level IV, can involve home confinement, work release, or placement in a Violation of Probation center; Level V is prison.)² All people on probation must agree to permit probation officers to conduct random searches.

Using this aggressive formula, police officers provide the muscle while probation officers conduct warrantless searches. By design, OSS officers would not only squeeze people on probation, they'd also get leads on other potential crimes. Together, their power became nearly limitless, as did the scope of their mandate.

After a drop in shootings in the year following its launch, officials deemed the program a success and formed the Governor's Task Force on Violent Crime (GTF), expanding the OSS structure into Delaware's three counties along with the capital, Dover. Reports compiled by state agency the Delaware Criminal Justice Council soon touted the units, which operate under the authority of the governor, as crucial in the fight against street crime.<sup>3</sup>

The agencies that feed Delaware's probation system—the police and the DOC—are clear that the OSS/GTF mandates are to prey upon people on probation. The DOC describes OSS/GTF as "statewide crime reduction initiatives that ... identify, monitor, and investigate high risk and/or repeat offenders who have demonstrated behavior that is a risk to public safety." In Wilmington, the purported mission is "to reduce the recidivist rate of individuals who are committing violent crimes." New Castle County says the program will "track and apprehend two-time violent offenders from committing more crimes or ultimately hurting an innocent bystander." 6

A 2007 application for federal funding for the programs obtained by the ACLU of Delaware contains the most straightforward explanation of the programs' goals. The document describes how OSS/GTF advocate for boosting both incarceration and the contact people on probation have with the justice system. Their goals are to reduce shootings by 30 percent and violent crime by five percent; increase technical probation violations by 15 percent; increase compliance with probation conditions by 30 percent; and, finally, add programs for kids and victims.<sup>7</sup>

Depending on how "success" is defined, the programs have met some of these goals. <u>In 2003</u>, for example, shootings that resulted in injury or death had decreased to 44 from 108 in 1996. Drug arrests spiked during that same period; OSS/GTF was responsible for roughly one third. For those who viewed increased arrests as a measure of success, the police-probation partnership was proving valuable. **The state's** 

<sup>&</sup>lt;sup>1</sup> There is no standard criteria that determines how someone ends up being policed by Operation Safe Streets and the Governor's Task Force. The DOC says that they cover all people on probation, while a handbook on New Castle County's program says that it's reserved for people who have committed violent crimes at least two times. "Operation Safe Streets is an all inclusive effort to monitor probationers and prevent future crimes from being committed by these violent individuals," it says (NCC internal operating procedure). Wilmington's explanation is more vague, saying that OSS applies to people on probation who are committing violent crimes. Neither the Dover Police Department nor the Delaware State Police replied to the ACLU of Delaware with details of their programs' criteria.

<sup>&</sup>lt;sup>2</sup> https://doc.delaware.gov/dcrc/navigating\_pnp.shtml

<sup>&</sup>lt;sup>3</sup> https://cjc.delaware.gov/operation-safe-streets/

<sup>&</sup>lt;sup>4</sup> DOC report

<sup>&</sup>lt;sup>5</sup> OSS officer description p 11

<sup>&</sup>lt;sup>6</sup> ACLU FOIA (New Castle)

<sup>&</sup>lt;sup>7</sup> DOJ FOIA Budget response p 2

<u>prisons filled</u> with more people than ever before—a 27 percent jump in just a few years, where the population has hovered ever since. And violent crime decreased by 3.5 percent over that same period. Officials credited this drop to the implementation of OSS/GTF.

Yet neither the Delaware DOC nor any police agencies released any more official data on the OSS/GTF programs for 15 years. In February 2021, the DOC finally released a report, its first since 2006, cheering the efficacy of Operation Safe Streets and the Governor's Task Force: "Probation and Parole partners with state and local law enforcement to keep communities safer," read the press release. The report largely focuses on enforcing compliance with probation restrictions and seizures of guns and drugs, while glossing over the many grievances that community members have filed over the years.

In reality, though the units justify their hostile home searches and traffic stops under the veneer of public safety, statistics show that they have not been effective at achieving one of the few goals of the programs: reducing violence. Gun violence, in particular, has actually increased overall since the units began operating. Meanwhile, many arrests of people on probation are for technical violations and not new crimes, trapping them in a carceral system that prevents them from advancing their lives. Even the promising crime statistics of the programs' early years are suspect. Delaware's decline in crime was on trend with the drop in violent crime across the country in that era, so it's likely that OSS/GTF overstated their roles.

To achieve their results, OSS/GTF officers have spent a quarter century tormenting the state's largely Black and Brown communities and violating their constitutional rights, the ACLU of Delaware has found. Residents of the neighborhoods the units patrol say that the OSS/GTF officers' presence makes them feel less safe, and people on probation attest to being strong-armed into becoming informants because of their precarious situation. In the face of these complaints, state and local governments have provided scant oversight or accountability while continuing to pour funding into the units rather than into intervention programs that tackle the root causes of violence.

Operation Safe Streets and the Governor's Task Force have been touted as great successes, yet by any measure they've not only failed as tools of crime prevention and community service, they've also been moral and institutional failures.

While most of OSS/GTF's activities are hidden from the broader public, what's clear is the lasting impression they've made on Delaware's impoverished majority Black neighborhoods.

To better understand the impact of the programs, and in the absence of any regular or reliable independent regulation of and reporting on their activities, the ACLU of Delaware drew on interviews with 17 people who had experiences with OSS/GTF officers, as well as court transcripts, legal filings, and official police narratives. Sixteen of the people we spoke to are Black. Eight were on probation when they had their encounters. Nine people were not on probation when they were searched under OSS/GTF's mandate to stop anyone they think is a threat to public safety. Fearing retaliation from officers, some of those interviewed declined to use their names or to share their stories on the record.

6

<sup>&</sup>lt;sup>8</sup> Delaware shootings by year (David Karas email)

The majority allege that Operation Safe Streets or Governor's Task Force units violated their constitutional rights, particularly the unreasonable stops, searches, and seizures and due process clauses of Amendments Four and Fourteen. Many said they had worked hard to rebuild their lives while on probation only to have those efforts ruined by interactions with the programs' officers. Some described officers' hostile words and actions as harassment.

The ACLU of Delaware reviewed 16 court cases involving the OSS/GTF programs; these included six home searches, five stops for traffic violations, two interactions in a parked car, and four stops while the person was on foot hanging out with friends or simply walking. In all but three of those cases, the courts found that OSS/GTF's conduct was unlawful.

"They're cowboys," said Tom Foley, a criminal defense lawyer who has represented people facing charges stemming from OSS/GTF arrests. "They make vice cops look like choir boys. These guys play fast and loose ... They're simply using their job title to violate the Fourth Amendment."

Despite their poor reputation in the streets, OSS/GTF have continued to receive political support, funding, and accolades. In 2015, OSS earned a TOP COPS Award honorable mention from the National Association of Police Organizations. And in 2017, Wilmington Mayor Mike Purzycki hailed OSS and urged community members to cooperate with the unit. "This will not be a situation in which everyone is treated as a suspect," he said. "We will respect the rights of law-abiding citizens. However, we know what we need to do to apprehend those who have been committing the crimes, and we are going to do it."

Asked to respond to allegations of brutality by OSS/GTF officers, Department of Correction spokesperson Jason Miller highlighted their alleged seizure of nearly 1,000 guns and 400,000 grams of drugs over the course of three years. He claimed that OSS/GTF officers are subject to a system of "checks and balances," including "a standard of evidence for making an arrest, timely appearance before a judge following an arrest, the presumption of innocence, legal defense, the right to petition the court for review, and the obligation to prove guilt beyond a reasonable doubt." He added, "In addition, participating law enforcement agencies maintain standards of conduct and practice that are subject to robust internal review and a grievance process available to members of the public."

Miller did not reply to any of our specific questions about court cases that found OSS/GTF officers to have abused their position. He also did not respond to a question about whether the DOC would refer the OSS officers who arrested Armani for an internal review. The DOC and WPD ignored requests for interviews with OSS/GTF officials.

To get a firsthand look at how the program functions, the ACLU of Delaware requested a ridealong with OSS officers from the Wilmington Police Department (WPD). The department declined the request on the grounds that ride-alongs with special divisions are not permitted. Agency and city officials also declined to fulfill many of our requests for data and documentation by claiming that the information was not available for release because it was either not documented or exempt under secrecy laws. In some cases, we were referred to another agency to obtain records, but when we requested the information from that agency we were told that the data does not exist.

https://www.napo.org/top-cops/winners-2015/

We combed through documents obtained through the Freedom of Information Act (FOIA) on the history of the program and collected two decades of data, but there is little information publicly available about the activities of the taxpayer-funded programs. Making the picture even fuzzier, there's no data on the strength of OSS/GTF charges in court. We requested data on how often OSS/GTF make stops, how many of those stops have resulted in an arrest, and how many of those arrests have led to an indictment. The DOC, the Delaware Department of Justice (DOJ), and the WPD all said that they don't maintain records with that information.

Notably, those agencies have not disclosed data on the racial breakdown of those subjected to OSS/GTF stops and searches.

When we requested this demographic information, the DOC declined to provide it. Yet it turned out this data had been obtained by court order as part of the state's case against a Black man searched by OSS.

Alarmingly, it showed that in 2019 and 2020, 57 of the 60 random vehicle stops made by OSS for traffic violations that resulted in a criminal arrest involved a Black driver. Two others involved a Hispanic person and a white driver with a Black passenger. The race of the driver in the last case was redacted, but the person arrested was Black.<sup>10</sup>

Alarmingly, it showed that in 2019 and 2020, 57 of the 60 random vehicle stops made by OSS for traffic violations that resulted in a criminal arrest involved a Black driver. Two others involved a Hispanic person and a white driver with a Black passenger. The race of the driver in the last case was redacted, but the person arrested was Black.

Because of the massive gaps in public reporting and the lack of cooperation from relevant agencies, the ACLU of Delaware has relied heavily on its own interviews and reviews of court cases. The bulk of our investigation has focused on Wilmington, where 57 percent of residents are Black but 64 percent of the city's officers are white. More than half the men in three zip codes—19801, 19802, and 19805—are on probation.<sup>11</sup>

Our findings show that OSS/GTF's unscrupulous tactics have resulted in the increased incarceration and supervision of Black and Brown people throughout the state while participating officers act with apparent impunity. The damage to the community has been deep and substantial. Some people reported staying inside on the days they knew the officers patrolled. People on probation said that their families would no longer provide lodging for them because of the threat of OSS/GTF's belligerent searches. And many said that they are scared to perform everyday tasks such as driving.

"A lot of people are intimidated," said one man, who asked to remain anonymous because he feared retaliation. "They have guns, they beat people up; a lot of people aren't going to step up and talk."

<sup>&</sup>lt;sup>10</sup> State v. Rose

<sup>&</sup>lt;sup>11</sup> Yasser Payne paper p. 9

Those that did talk told similar tales.

In April 2020, Shawn Mitchell was driving in East Wilmington with his sister and his brother in a car that a friend had rented for him. None of them were on probation. Mitchell turned left from North 10th Street onto North Spruce Street, and soon after two men driving an unmarked car turned on their siren and pulled him over. Corporal Rich Evans and Senior Probation Officer Daniel Collins, both with Operation Safe Streets, approached and told Mitchell they'd pulled him over because he hadn't used his left turn signal. As they were talking, Mitchell watched another patrol car speed recklessly the wrong direction down a one-way street toward him as if a large bust was in process. "The way they was flying down the street I knew they was on some funny stuff," he said in an interview.

Evans and Collins looked over Mitchell's rental agreement and told him he wasn't authorized to drive the car because his name wasn't on the agreement. Mitchell said that he told the officers his friend rented the car for him because his truck had broken down and he didn't have a credit card to pay for Enterprise's deposit.

The OSS officers asked all three to step out of the car. Mitchell said they proceeded to search it without asking. Then, they handcuffed Mitchell and his sister, Bilneshia Brown. The officers refused to tell them why they were being arrested. Once at the police station, the officers told Mitchell that they had brought him there because they found 18.3 grams of cocaine in the car's sun visor. They also confiscated \$510 from Mitchell's pocket as purported evidence that he was dealing drugs.

In interviews, Mitchell and Brown maintained that the drugs didn't belong to them. **Prosecutors agreed that the evidence didn't add up. In November 2020, they dropped the charges against Mitchell and Brown, citing a lack of evidence.** Mitchell claimed that the OSS officers have still not returned his money.

"For years I had heard about this happening," said Brown, who has lived in Wilmington her entire life but hadn't encountered OSS directly until the incident. "But when it happened to me, I'm like, they're really out here giving people time in jail for lies."

Jeffrey Rose's run-in with OSS was similar. <sup>13</sup> At around 10 pm on November 8, 2019, Rose drove to Wilmington's Southbridge neighborhood to pick up a female friend for a party they were going to in Baltimore. Rose, who is Black and was not on probation, was driving a black Chrysler 300 that he had purchased two weeks earlier. While stopped at a light near his friend's home, he noticed a black Chevy Tahoe next to him. Eventually, he parked near his friend's house on B Street, a quiet block on the easternmost outskirts of Wilmington lined with a Baptist church, a park, a community center, and a string of modest houses.

9

<sup>&</sup>lt;sup>12</sup> Mitchell interview

<sup>&</sup>lt;sup>13</sup> State v. Rose

Soon, he saw the Tahoe driving by again. Rose's friend climbed into the car, and he handed her a pill bottle filled with Ecstasy and Xanax. Within seconds, the driver of the Tahoe pulled up behind Rose while another driver in a gray car pulled in front to trap him from driving away. Rose, who had no idea who was



Jeffrey Rose sits on a staircase outside of his home. Photo by David Heitur of Dream Art Studio.

in either car, feared that whoever it was wanted to hurt him. He hopped out of the car with his hands in the air. Rose saw three police officers wearing vests and radios heading toward him. Two of them had their guns drawn. They were officers with OSS.

Immediately, two of the officers opened the passenger side door and removed Rose's friend from the car. They started searching it and found the pill bottle of drugs.

"Why did you get out of the car for?" asked the third officer, then-Sergeant Matthew Rosaio, according to a court filing.

"I thought something else was going on," Rose replied.

One officer took Rose's driver's license from his pocket then marched him over to the Tahoe, where he was handcuffed. By that time, Rose estimated that there were six OSS officers on the scene surrounding his car. It didn't take long for them to tell him that they'd found his book bag containing Ecstasy and that they had a family court capias warrant—a court order to detain someone to ensure that they'll appear in court.

Later, Rosaio and WPD Detective James Wiggins, who was in the passenger seat of the Tahoe, would testify that they were driving around Southbridge with Probation Officer Justin Phelps looking for "anything of a criminal nature or that would be suspicious." In their telling, Rosaio was slowly driving down B street with the windows open when he and Wiggins began to smell marijuana. To pinpoint the origin of the smell, Rosaio circled the block again. He deduced that it came from the black Chrysler with Rose inside. Rosaio said that once they pulled in front, Rose volunteered that he had been smoking marijuana, had a capias, and had a book bag containing Ecstasy.

In fact, there was no evidence that Rose had smoked marijuana, and he claimed that not only had he not smoked that day, he would never smoke inside his new car because doing so would damage the interior. Further demonstrating that officers had used the scent of marijuana as a pretense for searching his vehicle, Rose said that no one even asked him about marijuana until after he was in custody and an officer had discovered his medical marijuana card.

On January 6, 2020, a grand jury indicted Rose for drug dealing and aggravated possession. He bonded out soon after. His lawyer, Tom Foley, argued that OSS officers had illegally stopped and searched Rose, and he filed a motion to throw out the evidence that led to Rose's arrest. In June 2022, Superior Court Judge Abigail LeGrow agreed, issuing an order to suppress the evidence. Months later, prosecutors agreed to drop the charges.

In an interview, Rose said that he was "scared shitless" when OSS officers ambushed him. "I could see if I was pulled over or something, but they came out of nowhere," he said.

Though Rose is no longer facing charges, he has paid for the arrest in other ways. Because he was charged right before the COVID-19 pandemic began, he had to wait more than two years to resolve his case. At the time, his son was a newborn, and Rose had just moved into a house with his son's mother. The uncertainty about whether he would go to prison strained their relationship.

"The conversation changed to 'I don't know where I'm going, but if I'm not going to be around let's prepare for it," he said.

Rose also had to pay \$6,000 to his attorney, and the police have not returned his car, which they seized during the arrest.

Even though Rose, Mitchell, and Brown weren't on probation, Operation Safe Streets and Governor's Task Force officers had authority to investigate them under the broad umbrella of "crime prevention." They were not alone. In 2003, many of the 82 percent of arrests credited to OSS/GTF were of people not on probation, according to a report compiled by the state. The arrests inflated Delaware's

In 2003, many of the 82 percent of arrests credited to OSS/GTF were of people not on probation, according to a report compiled by the state. The arrests inflated Delaware's prison population that year by nearly 13 percent. Collateral arrests have dropped recently, but DOC data still shows that two in five people arrested by the units over the past eight years weren't on probation.

prison population that year by nearly 13 percent. Ollateral arrests have dropped recently, but DOC data still shows that two in five people arrested by the units over the past eight years weren't on probation.

In fact, OSS/GTF are encouraged to extort people on probation so that they can make more collateral arrests. A 2004 impact report on OSS/GTF submitted by the Delaware Sentencing Research and Evaluation Committee described how that works. "[T]eams may stop suspicious persons for questioning and will try to solicit information from the persons they question about illegal activities that are going on in the general area," the report reads. "In many cases the individual questioned is on probation, which affords the OSS-GTF teams more leverage." The report's authors openly state that arrests are a goal of OSS/GTF, noting that "collateral investigative activity" generates "many more arrests than curfew checks do."

"It's inevitable," said David S. Swayze, Chair of the Delaware Sentencing Research and Evaluation Committee and former City Solicitor of Wilmington, of collateral arrests. "If you create that level of surveillance and that kind of access you're going to uncover criminal activity to a degree that would not be possible through normal policing."

11

<sup>14</sup> https://cjc.delaware.gov/wp-content/uploads/sites/61/2017/06/oss-gtf-20041207-min.pdf

<sup>15</sup> https://bjs.ojp.gov/content/pub/pdf/p03.pdf

The permissive approach granted to OSS/GTF officers—they are allowed to make stops and surveil people on a whim—combined with an absence of oversight and accountability, breeds an atmosphere rife for abuse of the powerless. Wilmington resident Hakeem Coates, who has had several run-ins with OSS/GTF, put it bluntly: "You're going to find them everywhere there's poverty," he said.

Officers frequently rely on trivial violations as a means to stop people and conduct searches independent of having received a tip. Out of 67 proactive stops like this made by OSS officers between May 2019 and May 2020, 11 were for tinted windows and 11 were for failing to signal, a review of court documents shows. Other reasons included leaning back too far in the driver's seat, loitering, and not wearing a seatbelt. For example, in July 2019 OSS warned three Black men standing in front of a vacant property that they were loitering. Officers then claimed that they smelled marijuana and patted down two of the men. They did not find any contraband. Officers then discovered that the third man was on Level III probation. A pat down recovered a digital scale. Based on that finding, OSS searched his home and found cash and marijuana.

Out of 67 proactive stops like this made by OSS officers between May 2019 and May 2020, 11 were for tinted windows and 11 were for failing to signal, a review of court documents shows. Other reasons included leaning back too far in the driver's seat, loitering, and not wearing a seatbelt.

#### OSS has justified these kinds of stops as improving public safety.

In testimony, OSS Detective Wiggins has laid out how his team decides where to patrol and whom they target. At the core of his job, he has said, is an effort to "stop things from happening before they happen." For Wiggins, that involves looking for suspicious activity and stopping cars proactively.

Each day's patrols are somewhat random. "We meet in the office and figure out what we're going to do that day," he said. "Unless we get direction where to go for a specific matter ... it's up to us." That amounts to patrolling the "violent areas of the city and violent offenders and things of that nature" along with people on probation.

Strikingly, Wiggins has said that because he works with OSS, he doesn't have to record every stop he makes; he's only required to create a record if the stop results in a ticket. He told the court that in the four years he'd been assigned to OSS he'd made approximately one thousand traffic stops, sometimes as many as 50 in a week.<sup>17</sup>

For example, Wiggins was patrolling with Phelps, the probation officer, on the night of August 14, 2019, when he pulled over Ivan Cornelius for failing to turn on his turn signal. **According to a court filing,** 

<sup>&</sup>lt;sup>16</sup> State v. Rose

<sup>&</sup>lt;sup>17</sup> State v Cornelius p 2

surveillance-camera footage obtained by Cornelius' lawyers shows that within minutes, at least seven officers were on the scene. Wiggins claimed that he smelled marijuana and noticed marijuana leaves on the door and an air freshener, which he referred to as "blunt spray." He then asked Cornelius to step out of his car and proceeded to search it. In a hearing, Wiggins said that he "found a bunch of leaves" but that there wasn't enough to send for lab testing. In reality, labs can test small amounts of marijuana. Superior Court Judge Calvin L. Scott, Jr., granted Cornelius' motion to suppress the evidence of marijuana in July 2021, finding that there was no lawful reason for Wiggins and Phelps to have stopped his car and conducted a warrantless search. With no remaining evidence to convict him, the charges against Cornelius were dropped.

In another case, OSS pinned a man to the ground and arrested him for having a gun after Officer Rosaio honed in on him because he was walking with his right arm close to his body. This behavior, Rosaio would later testify, "is one of the telltale signs of somebody who is armed with a handgun." 18 Both the Superior Court judge and the Delaware Supreme Court judges found that there wasn't probable cause to conduct the stop in the first place and criticized the arrest, ultimately agreeing to suppress the evidence.

And in another case, a GTF detective claimed that he was allowed to search a Black man's vehicle because he smelled a faint odor of cocaine.

"When we come across a particularly questionable traffic or pedestrian stop in our case files—where it stretches the bounds of credulity that the police had any legal basis to stop our clients—it is very often a Safe Streets or Governor's Task Force case," said Chief Public Defender Kevin O'Connell. "Time and time again, we see officers in these units think they are above the law and conduct unlawful stops and searches. And we know, based on our experience and our clients' experiences, that these units routinely perform unconstitutional searches that disproportionately impact Delaware's Black communities."

He continued, "Safe Streets uses a person's probationary status or a vague reference to an anonymous informant or some generalized whiff of marijuana as the basis to stop and search people, their cars, and their homes. These tactics are devastating, causing our clients to face pretrial incarceration, loss of employment, loss of housing, and other consequences—all based upon a fundamentally illegal stop made by officers who operate with little to no transparency or accountability."

The ACLU of Delaware asked Attorney General Kathleen Jennings why she prosecutes questionable arrests brought by OSS/GTF officers and whether the DOJ sees a need for the programs to be reformed. A spokesperson replied that the DOJ does not supervise or set policy for OSS/GTF and won't address particular violations. "We prosecute all criminal trials in the state," said DOJ Communications Director Mat Marshall in an email. "Case screening is based on evidence, the high burden of proof in a criminal trial, and our constitutional duties. In cases where evidence meets those objective standards, we have an ethical duty to prosecute; in cases where it does not, we have an ethical duty not to. While individual officers and witnesses may be part of that evaluation, we cannot preempt the entire analysis with a binary decision about the arresting agency."

<sup>&</sup>lt;sup>18</sup> State v. Murray

Since the DOJ continues to prosecute cases with illegally obtained evidence and there's little resistance to OSS/GTF among elected officials, judges have become the last line of defense when it comes to protecting people's rights. Results have been mixed. Some judges have frowned upon OSS/GTF's practices. Of the 16 OSS/GTF-related court filings the ACLU of Delaware reviewed, in all but three cases the judge ruled that officers had violated constitutional rights. In one case, a judge called the programs "aggressive and hostile." But there are just as many outcomes that go the other way. "There have been plenty of Safe Streets cases over the years where the defense has won," said Foley, the criminal defense attorney. "[But the state] wins a lot of them."

Of the 16 OSS/GTF-related court filings the ACLU of Delaware reviewed, in all but three cases the judge ruled that officers had violated constitutional rights. In one case, a judge called the programs "aggressive and hostile."

Operation Safe Streets and the Governor's Task Force derive their authority from the partnership between police and probation, which allows them to capitalize on the limited protections provided to people on probation. At the start of a probation sentence, all people on probation are required to sign an agreement acknowledging that their person, property, personal belongings, living quarters, and vehicle are subject to search and that they can be arrested without a warrant.<sup>20</sup>

Probation officers aren't required to get permission from a judge before they conduct a search, but they are supposed to follow a set of rules. Before they start the search, they have to secure an administrative warrant by going through a checklist with their supervisor. Knowledge that the person on probation is on probation and possesses contraband; information from a reliable informant that's been corroborated; and approval of the search by a supervisor are some of the items a probation officer has to clear to begin a search.<sup>21</sup>

But it's not uncommon for officers to skirt the conditions of the checklist; we found court documents describing at least four instances where judges declared that officers had taken someone's keys and rifled through their home and vehicle but either hadn't run through the checklist with a supervisor or had based their search upon unreliable information. In one case, a probation officer and a New Castle County detective had planned to conduct a search before the individual even arrived at the probation office for a check-in because a confidential informant had told them that the man sold drugs out of his home, according to a court filing. Once the man's drug test returned a positive result, the officers used it as license to lock him in a cell, take his keys, and search his home and vehicle. Superior Court Judge Meghan Adams found that the officers hadn't properly followed the checklist, writing in her decision that the search was "intrusive and illegal." <sup>22</sup>

<sup>&</sup>lt;sup>19</sup> State v Watson

<sup>&</sup>lt;sup>20</sup> P&P docs

<sup>&</sup>lt;sup>21</sup> Procedure 7.19 in Irwin v Delaware p.14

<sup>&</sup>lt;sup>22</sup> Irwin v Delaware

In another case, a Delaware state trooper with the Governor's Task Force who usually patrolled the streets performing surveillance and drug buys testified that to fill time during a rainy shift, he and his partner decided to "split the alphabet" and run searches for all people on Level III probation in the 19702 zip code, which is the closest to their station. They decided to search one man simply because he was on Level III probation, had failed drug tests, and lived nearby.<sup>23</sup> The officers subsequently arrested him for having drugs, but a judge granted a motion to suppress evidence in the case, writing that it exhibited "trademark properties of a fishing expedition." She continued, "In the face of inclement weather, the ... net was cast serendipitously—he was closest to Troop 2, after all. [He] was fish number one in the 19702 barrel."

The partnership between police and probation gives officers opportunities that would otherwise be illegal. "Law enforcement loves it because they utilize the fact that somebody is on probation as a stepping stone to get into their houses, to get in the cars," said John Malik, a Wilmington criminal defense attorney who has represented clients arrested by OSS/GTF.

Officers' frequent animosity for the rules makes it difficult for the roughly 9,540 people<sup>24</sup> on probation in Delaware to make it out of the system. As the number of people on probation has ballooned over the last 25 years, there has been a requisite jump in those re-arrested while on probation. Between 2013 and 2015, 51 percent of those re-arrested were taken back into custody because they were deemed to have violated

While violation-of-probation filings have trended downwards over the last five years, they still top 3,000 a year.

the conditions of their probation. That figure increased to 54 percent between 2014 and 2016. In all four years, the majority of those who were re-arrested for a failure to comply with probation conditions had committed technical violations, not new crimes. While violation-of-probation filings have trended downwards over the last five years, they still top 3,000 a year. <sup>25</sup> Over the last eight years, it's one in five. <sup>26</sup> As recently as 2018, Delaware was among the top 10 states with the highest probation rates in the country.

In its August 2020 report, "Delaware's Broken Probation System: The Urgent Need to Reform Community Supervision in the First State," 27 the ACLU of Delaware outlined the devastating consequences of aggressive probation policies and made recommendations for how to reduce this primary driver of overincarceration in the state. The report describes how the culture of probation breeds distrust in the communities and how lengthy sentences unnecessarily trap people in the system. Instead, the DOC must reduce arrests for technical violations, increase resources devoted to case-management reentry services, and end OSS/GTF. "The effect of this program is harassment and over-policing of communities of color," the report states. "It creates a culture of probation focused on law enforcement, not rehabilitation, and it doesn't make anyone safer."

<sup>23</sup> State v Fav

<sup>&</sup>lt;sup>24</sup> 10/26/21 probation numbers (Jason Miller email)

 $<sup>^{25}\</sup> https://courts.delaware.gov/aoc/annual reports/fy 20/doc/Superior\% 20 Criminal\% 20 Caseload\% 20 Trend\% 20 Chart.pdf$ 

<sup>&</sup>lt;sup>26</sup> DOC data, 2835 VOP from 2012/13552 arrests

<sup>&</sup>lt;sup>27</sup> https://www.aclu-de.org/sites/default/files/probation\_report\_final.pdf

Living under the threat of intrusive surveillance has also proved to deter people from completing probation. "For the ones who, you know, get searched constantly and may not have nothing on them and are just trying to get their life back," said Coby Owens, chair of police reform for the NAACP, "they feel like what's the point, you're just always gonna see me as who I was in the past, I might as well just go back to the life that I was in."

Wilmington leaders have long experimented with intensive surveillance techniques in an effort to reduce crime. In the 1970s, officials pioneered the concept of a "split-force patrol" that separated officers into two groups: One group would respond to calls for service while the other patrolled the city's streets looking for crimes in progress.<sup>28</sup> A couple years later, the city planned to deploy 40 auxiliary police officers carrying night sticks and mace to police its neighborhoods and report crimes or activity they deemed suspicious. The plan, which was funded by both the federal government and the state government under the city's Neighborhood Security Project,<sup>29</sup> was short-lived, however. After locals denounced the dangerous equipment the officers would carry, the unit was disbanded before it ever set off on its first patrol.

While the 1990s included the introduction of Operation Safe Streets, the early 2000s were marked by "jump-out squads": Officers suddenly launched themselves from their vehicles to line people up and pat them down in search of drugs. The plainclothes unit soon gained notoriety for its hostile tactics, which included taking pictures of people they had searched, regardless of whether they were arrested, to store as "possible evidence for ongoing investigations," according to a 2002 Associated Press report. The city's most recent approach inadvertently spurred more violence. "The crackdown on drug and gun-related operations is similar to stirring a hornet's nest, in that such crackdowns can lead to turf or territorial clashes that oftentimes become violent," said former Mayor James Brown and then-Police Chief Michael Szczerba in a press release at the time.

Data shows that OSS may be having a similar effect on the community. Participating agencies tout arrests for guns and drugs, but at the same time they sow distrust among community members. As a result, officers aren't achieving a goal of the program: improving public safety. Since 2000, there have been ten years with more shootings in Wilmington than before OSS was formed. Last year was one of them, with 120 shootings resulting in 152 victims. In 2020, there were 135 shootings with 169 victims, and 2017 was a record year that saw 174 shootings and 202 victims. According to the DOC, the unit seized 636 guns during 2019 and 2020. But even with those guns off the streets, there were still 230 shootings in Wilmington over the course of the two years.

In part, that's because OSS/GTF is powered by a network of confidential informants who must choose between facing charges and potential incarceration or snitching, which often fuels retaliation and violence. Individuals interviewed by the ACLU of Delaware said that should officers find something during a stop—guns, drugs, an expired registration—they will use it to coerce that person into becoming an informant. In exchange, OSS/GTF agrees not to charge them. If a

16

<sup>&</sup>lt;sup>28</sup> https://www.ojp.gov/ncjrs/virtual-library/abstracts/alternative-approach-police-patrol-wilmington-de-split-force

 $<sup>^{29}\ \</sup>mathrm{https://www.ojp.gov/pdffiles1/Digitization/45757NCJRS.pdf}$ 

person is on probation, officers have even more of an advantage because that person faces the threat of going back to prison should they decide not to work for the units.

"Any time you get arrested it never fails," said Sinque Miller, who was on probation in the 2000s. "They say, 'You know where we can get this at? We can make this go away." He said he has friends who have been pulled over and searched, then asked to sign papers on the side of the road that acknowledge the items the police found as proof that could be used in court should they not fulfill their end of the deal. Miller said those friends ended up incarcerated anyway, though it's impossible to say whether they were imprisoned because they failed to turn over useful information to law enforcement.

#### Asked to confirm this practice, the WPD did not respond.

There's no data on how many confidential informants are active in Delaware. Police attribute this to maintaining the anonymity of their informants. Conveniently they also say, according to court testimony, that their work with confidential informants is why they didn't wear body cameras <u>until last year</u> and why they use a private radio channel that's not recorded or monitored by dispatch.<sup>30</sup>

The ACLU of Delaware requested body camera footage of arrests and searches conducted by OSS/GTF, but the participating agencies all said that they either didn't have footage or wouldn't turn it over because it's exempt from public records laws.

When footage is available, there's no guarantee that it will be usable. The New Castle County Police Department has required cameras for years, but officers have crafted ways to avoid actually capturing footage of stops such as turning away from the relevant action. They also distance themselves when probation officers call their supervisors to go through the checklist that would allow them to initiate a search and/or when the search itself is happening, according to a defense attorney who asked to remain anonymous out of fear of retaliation.

Though complaints about OSS/GTF are easy to come by on the street, there's little public information on formal complaints lodged against the programs. The Wilmington Police Department and the Delaware State Police said they are unable to reveal how many complaints they've received because that information is protected by the state's <a href="Law-Enforcement Officers"><u>Law-Enforcement Officers</u></a>' Bill of Rights. The New Castle County Police Department said that it received one complaint from 2019–2021. The DOC would not disclose how many complaints it has received since 2000.

The ACLU of Delaware also requested use-of-force data and disciplinary records from the participating agencies. We were told that that information is also protected from disclosure under the Law Enforcement Officers' Bill of Rights, a sweeping statute that shields police disciplinary records—information that can be vital to assessing the trustworthiness of an officer's word—from public scrutiny. (GTF has been involved in two shooting deaths, both in Dover; the attorney general's office concluded that both shootings were warranted.) As long as there's an absence of independently verified data and no public access to OSS/GTF policies and procedures, it's impossible to confirm any of the agencies' claims.

\_\_

<sup>&</sup>lt;sup>30</sup> Houston testimony p. 100

Probation originally developed in the nineteenth century as a way to incentivize good behavior in exchange for freedom. Since then, it's been viewed as a powerful mechanism for reintegrating people into society after time at correctional facilities or for keeping them out of prison while they find jobs, housing, and stability. In reality, probation has morphed into a system that promotes incarceration by creating conditions that make it difficult for people to succeed in the outside world.

"They don't help people get jobs, housing, treatment for addictions, and all these things that we tell people to get," said Allison Frankel, an ACLU fellow working on probation and parole. "They very often fuel people right back to jail and prison."

Partnering the probation system with police departments, which also prioritize arrests over rehabilitation, simply exacerbates the problem. "The orientation of officers is we have to go into the neighborhoods and find the bad guys," said Jim Nolan, a West Virginia University professor who worked in the Wilmington Police Department in the '90s. "All of our institutional awards were connected to making arrests and getting seizures of drugs and guns. The community outcomes didn't matter."

While police are focused on winning awards, gun violence persists. At one point, shootings in Wilmington had become so frequent that city officials enlisted the Division of Violence Control under the Centers for Disease Control (CDC) to conduct a study of their causes and how to fix them. The CDC released its <u>final report</u> in 2015. Researchers found that in recent years, Delaware's homicide rate had increased so sharply that it was outpacing every other state. The CDC also revealed data on those involved in gun violence: nearly a third had at some point been investigated by the state's welfare agency as a victim of maltreatment, 86 percent were jobless in the months preceding the violence, and roughly two-thirds received social services through schools they attended. Moving forward, researchers recommended that state officials improve data sharing and create a risk assessment tool that would pinpoint individuals who could benefit from early intervention such as counseling in a bid to prevent a future incident. Notably, their solutions did not include the police. "The tool is to be used by social service providers to inform violence prevention efforts, and provisions should be established to preclude use as a tool for law enforcement action," read the report.

Experts aren't surprised by the undiminished gun violence. They say that programs like OSS/GTF actually make cities more unsafe. "The police are casting a wide net and basically stopping everything and everybody that moves under the guise of public safety," said Rod Brunson, a criminology professor at the University of Maryland. "But even though it's aggressive, it doesn't make them more effective in the crime-fighting mission. It actually reduces the likelihood that citizens will view them with legitimacy and want to collaborate in crime-control efforts."

"[OSS is] more punitive, and its true focus or philosophy is the criminalization of a population," said Dr. Yasser Payne, a University of Delaware professor who has conducted an ethnography of Wilmington.

Despite these major flaws, there has been little movement among elected officials to end the programs. The ACLU of Delaware sent our findings to Governor John Carney and Wilmington City

Council President Ernest "Trippi" Congo II, but neither responded. Purzycki, Wilmington's mayor, declined to comment.

Defense lawyers say that the programs must be terminated. "The Delaware Office of Defense Services (ODS) believes Safe Streets and the Governor's Task Force should be abolished," said O'Connell, the head public defender. "Further, the Delaware General Assembly must amend Delaware's Law-Enforcement Officers' Bill of Rights (LEOBOR) to make police misconduct records accessible to the public and defense counsel. Bad policing practices do not make our communities any safer. Instead of over-policing, we should invest in our communities and promote transparent public safety solutions that foster trust and not fear."

Wilmington Councilmember Shané N. Darby, who represents the 2nd District, is one of a handful of officials to have called for an end to OSS/GTF, charging that the programs fail to improve public safety and harm communities of color. "I think to decrease crime you have to target the reasons *why* people commit crime, like lack of housing, high unemployment rates," Darby said. "Those are the types of things that money should go to, not trying to use this way to get guns off the street, because we know it's not working."

Others agree that the city and the state must invest in solutions that target the societal issues at play. "There may be some temporary resolution with heavy policing action because you're going to eliminate some of the heavy hitters off the street, but it doesn't eliminate the *problem*, it simply creates a vacuum," said Henry Smith III, chair of the Wilmington Community Advisory Council. Through the Council, which works to prevent youth violence by addressing its root causes, Smith advocates for the state to pour its money into community organizations that partner with people to improve their lives instead of locking them up.

In 2019, state and city officials announced the arrival of a program known as Group Violence Intervention in Wilmington. Through group meetings, emergency room visits for victims, and social services outreach, it predominantly targets individuals on probation who have risk factors for involvement in gun violence. The approach relies heavily on law enforcement and promotes increased surveillance should someone continue to be involved in violence. It has found some success—in its first year, four out of 10 people targeted by the program accepted social services, according to a presentation made to the City Council in November 2020<sup>31</sup>—but the effort has not nearly been enough, as shootings have only continued to spike.

It's unclear how much the state and the cities are spending on Operation Safe Streets and the Governor's Task Force. Both the DOC and the police agencies that participate declined to provide budgets for the programs. Tim Martin, legal services administrator for the DOC, said that since all the funding is allocated through general funds for probation and parole, they don't track detailed spending. The City of Wilmington does not keep a distinct budget for its OSS unit either—Assistant City Solicitor John Hawley said that the city doesn't pay for the program and simply assigns officers to the units.

\_

<sup>&</sup>lt;sup>31</sup> GVI presentation

Nonetheless, the imbalance in priorities is glaring. In 2022, the state budget's general fund for probation and parole totaled <u>\$35.3 million</u>. By contrast, it allotted a mere \$100,000 for group violence intervention programs.

In 2022, the state budget's general fund for probation and parole totaled \$35.3 million. By contrast, it allotted a mere \$100,000 for group violence intervention programs.

In May 2021, seven months after he was arrested,

Armani Congo-Brown was indicted by a grand jury on four charges relating to the presence of Sharee's gun at their home. One consequence of his original arrest in January 2020 for unlawfully carrying a gun was that he was prohibited from carrying one. These new charges included possession of ammunition, carrying a concealed weapon, and resisting arrest. A judge set his bail at \$10,500. With three young kids to care for, Sharee couldn't afford to pay for Armani's release. Prosecutors offered him a plea deal of five years in prison, but he refused, demanding that his case go to trial.

By then, details of what had led the OSS officers to Armani that night in October 2020 had become clearer. According to a police narrative obtained by the ACLU of Delaware, Operation Safe Streets had gone to Armani's home after a "cooperating source" told them that he had a gun. Police further justified the search by noting that he lived in a "known high violent crime, high drug area."<sup>32</sup>

According to the police account, they had driven to Armani's home in a gray, unmarked Dodge Durango and found him sitting on the couch on the porch. Probation Officer Phelps yelled out Armani's name and identified himself as a probation officer. Armani made eye contact with the officers and walked into the house despite warnings that he should stop, according to the police. The officers followed him into the house and attempted to tase him while he was going upstairs—they claim that the taser did not connect—then chased him up and took him into custody.

The police narrative does not include Armani's and Sharee's allegations that the officers tased Armani and beat him up, took Sharee's phone, and pushed her down the stairs. The ACLU of Delaware sent a list of specific questions about the arrest to the Wilmington Police Department, but they did not respond.

"The Operation Safe Streets people shouldn't have any authority to do the things that they do," said Sharee. "This is wrong. How can you expect citizens to put their trust and faith in y'all and this is what you're giving out to the world? You're doing this harmful stuff to people, but we're supposed to trust in you and believe in you? You're supposed to serve and protect. You're not protecting. You're causing more harm. They need to be shut down immediately."

In a November 2020 preliminary hearing, Detective Wiggins had a slightly different story.<sup>33</sup> He testified that the reason OSS had gone to Armani's house was to conduct a probation check, not because an informant had told him Armani had a gun. **Asked if he heard Sharee tell anyone that the gun** 

<sup>&</sup>lt;sup>32</sup> Affidavit of probable cause

<sup>&</sup>lt;sup>33</sup> Preliminary hearing transcript

belonged to her, Wiggins replied, "I am not aware of that. That does sound familiar though. I'm not sure. It wasn't documented." However, he admitted that on the way to the police station Armani repeatedly said that the gun didn't belong to him. Wiggins testified that he hadn't yet found out if the gun belonged to anybody, but he acknowledged that it wasn't stolen.

Sharee provided the ACLU of Delaware with a receipt for the 9mm Beretta that she had purchased in August 2020, just two months before Armani's arrest. She also obtained a document showing that the Wilmington Police Department had asked the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) in August 2021 to conduct a search for the owner of the gun. The search had returned Sharee as the owner. In the face of this evidence, Armani remained imprisoned.

Sharee had also identified the officer that punched Armani as Detective James Wiggins. She said she tried to submit a formal complaint to the Wilmington Police Department but staff made it so difficult that she gave up. The WPD did not respond to questions about Wiggins' alleged conduct that evening.

When Armani spoke to the ACLU of Delaware in January 2022 through a video-chatting platform for incarcerated people, he maintained that his charges stemmed from harassment by OSS and that he was

Sharee Congo's granddaughter holds a photo of Armani. Photo by David Heitur of Dream Art Studio.

eager to go to trial. "It makes me angry because I was doing good," said Armani, who was spending his days reading, working out, and talking with people inside rather than working toward an independent life outside in the community with his family.

In February, Armani fired his public defender, saying that he had largely been unavailable for the duration of his case.

Despite the proof that the gun did not belong to Armani, prosecutors were planning to take the case to trial in September. Armani, who was unable to afford a private attorney, would have to face the system alone.

A week before the trial, Armani took a plea deal. Though he believed in the strength of his case, he knew that he wasn't ready to represent himself at trial and didn't want to risk the maximum sentence of 15 years in prison should he be convicted. Under the plea deal, Armani received five years in prison. Since he's now already been incarcerated for nearly two years without being convicted of any crime and has earned time off his sentence for good behavior, he has approximately 18 months left. Once he gets out, he will be on probation for eight months. If he is found to have violated probation, he will be sent back to prison for 10 more years.

<sup>&</sup>lt;sup>34</sup> Preliminary hearing transcript p 14

"I'm tired of fighting with them," Armani told the ACLU of Delaware after he took the deal. "Every time I take two steps forward they come and do some crazy stuff and knock me five steps back."

To ensure that he never has to interact with OSS again, he is planning to move out of state once he completes probation. For Sharee, the hole ripped in her family by Armani's absence will only grow bigger.

"Me and my kids were very, very close, it's always been just me and them," said Sharee, who tries to speak with Armani by video several times a day. "Fridays was family game night. We played Monopoly, Scrabble, cards, anything they wanted to play. Just sit and talk. Bond with each other. It hasn't been happening since Armani's been gone. It's not the same. I'm used to coming down the stairs every morning and my son would be sitting in the living room on the couch waiting for me. Still to this day when I come down the steps I always look to see if he's there."

### **IF YOU HAVE EXPERIENCED:**

Police violence
Unreasonable search of home or car
Being pulled over without cause
Being stopped for no reason
Evidence tampering

## **ACLU-DE** wants to hear your story.

Share your story confidentially online at ACLU-DE.org/get-help.

