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Case Number 101,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE BRYAN,	§	
	§	
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	No. 101, 2025
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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DATE: September 19, 2025

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NATURE AND STAGE OF THE PROCEEDINGS

Andre Bryan[1] was born in Cuba in approximately 1959 and became an American citizen in 2016. Bryan did construction work on the home of Yembah Mansary and his wife Fatma Jalloh (referred to, with their daughters, as the "Mansary Family").[2] Bryan became friendly with the Mansary family and stayed with them while performing work on their home or other homes in the area. The Mansary children referred to Bryan as "Uncle Bryan."

Bryan was ultimately accused and convicted of committing sexual abuse against two of the Mansary family's three daughters, M.M. in 2010 or 2011, when she was nine years old, and K.M. in 2014 or 2015, when she was also nine years old. On August 28, 2023, Bryan was indicted for one count of Rape in the Second Degree and a dozen other felony sexual offenses. On July 18, 2024, just before trial, the State filed a *nolle prosequi* of four of the counts pertaining to charged conduct against M.M., leaving one count of Unlawful Sexual Conduct First Degree and Sexual Abuse of a Child by a Person in a Position of Trust as the only charges pertaining to M.M.

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[1] Bryan was tried below under the name "Bryan Andre" (A1) and apparently uses the names "Bryan Andre" and "Andre Bryan" interchangeably. A124.

[2] The victims were minors at the time of the crimes against them and are referred to herein under the pseudonyms "M.M." and "K.M."

Bryan rejected a plea offer in which the State capped its recommended sentence at five years of incarceration. A70-72. Trial occurred on July 22-23, 2024. A78-A230. The State called five witnesses in its case: the two victims (M.M. and K.M.), their parents, and Officer Ashley Starrett, a detective with the Delaware State Police who was employed by the New Castle County Police Department at the time of her investigation of the case. A78-209. After the State rested, Bryan testified in his defense, with the assistance of an interpreter. A210-221. After Bryan answered several questions in English, the prosecutor sought a sidebar conference and objected, after which the trial court ruled that Bryan had to answer through the interpreter. A211-212. Bryan agreed that this was appropriate and made no objection. A212. The remainder of Bryan's testimony was delivered through the interpreter, aside from one brief answer in English. A212-221. The defense rested, and the following morning, the State called the father of the victims back to the stand briefly to rebut Bryan's claim that there were cameras in the Mansary home. A227-29.

The jury deliberated for approximately three hours before finding Bryan guilty on all counts. A283-85. On February 7, 2025, the Superior Court sentenced Bryan to an aggregate 50 years of minimum mandatory incarceration followed by probation. Ex. B to Op. Brf.; A308-09. Bryan filed a timely Notice of Appeal and Opening Brief. This is the State's Answering Brief.

SUMMMARY OF ARGUMENT

I. Appellant's argument is denied. Whether to grant a Motion for Relief from Prejudicial Joinder is within the discretion of the trial court. Here, the trial court properly exercised its discretion because of the similarity of Bryan's alleged abuse of M.M. and K.M.: both instances occurred when the victims were 9 years old, and both occurred in the same room in the same house and involved similar conduct. Given these circumstances, denial of the Motion for Relief from Prejudicial Joinder was a proper exercise of the trial court's discretion. The trial court gave adequate reasons for its ruling when it rendered that ruling on July 8, 2024, the morning that trial was scheduled to begin. Bryan was not prejudiced by the fact that the trial court later issued a Memorandum Opinion setting forth its reasons for denial of the motion in greater detail.

II. Appellant's argument is denied. Bryan demanded an interpreter, and trial was initially postponed to accommodate that demand. Moreover, Bryan never asked that he be permitted to testify in English, with a "standby" interpreter in case they were particular words that he did not understand. While Bryan now claims that "[t]hese issues were exacerbated by the lack of *voir dire* examination or appropriate jury instructions that would have ensured that jurors were not unfairly prejudiced by Bryan's use of an interpreter" (OB 6), Bryan never asked for such *voir dire* or such a jury instruction. Accordingly, Under Supreme Court Rule 8, Bryan can prevail on

this claim only if he can demonstrate “plain error.” Bryan does not argue that there was plain error and therefore has waived this claim. But, if the Court were to consider this matter on the merits, it should find that no plain error occurred.

STATEMENT OF FACTS

This case arises from Bryan's sexual abuse of M.M. and K.M. when they were each approximately 9 years old.

A. Andre Bryan

Bryan was born in Cuba in 1959. (A211; A196-7). He immigrated to the United States in approximately 1980 and became a United States citizen in 2016. A213.

Bryan worked in home construction and was recommended to Fatma Jalloh (the victims' mother) by a mutual friend. A95; A211. Bryan initially did work on a bathroom in the Mansary home. A96; A122-24. Bryan and Fatma Jalloh became friendly, and Bryan performed additional work on the Mansary home, eventually converting their garage into a guestroom. A96; A124-25; A213-214. Bryan lived in New York (A212-13), and the Mansary family allowed Bryan to stay in the guestroom when he was doing other projects on their home, and also when he was in Delaware performing work for others. A100-101; A 126-28. The Mansary family considered Bryan to be part of their family. A95; A97; A100-101; A116; A142; A148; A166. He was welcome into their home, and the children (M.M. and K.M) referred to Bryan as "Uncle Bryan." A97; A128; A143; A165.

B. Allegations of Sexual Abuse

In 2012, M.M. and K.M. were being counseled by a pastor at the Mansary family's church. A107-08; A178. K.M. was 14 or 15 years old at the time and entering high school. A177-78. The pastor, who K.M. regarded as akin to a therapist, inquired about her "experience with boys" and "like hormones and all that stuff." A178. K.M. testified that the pastor suspected that "something was heavy on my heart" and "I wanted to say something to him." A188. At that point, K.M. disclosed that Bryan had sexually abused her several years earlier, when she was 9 or 10 years old. A178-79. The pastor did not bring up the idea that Bryan may have touched K.M. inappropriately; K.M. was clear that she brought that up herself, in response to the pastor's question about what was bothering her. A187-88.

M.M. was 20 years old in 2021. A141. She met with the pastor after K.M. had met with him, and she testified that the pastor "gives everybody personal readings, what he sees" in their future, and "what our purpose in life is." A151. During the counseling session with M.M., the pastor knew that something was wrong. A152. In the ensuing conversation, M.M. told the pastor that Bryan had sexually abused her in approximately 2010, when she was approximately 9 years old. A156.

C. Events Leading to Trial

(1) *Investigation and Indictment*

The pastor told Fatma Jollah of Bryan's sexual abuse of M.M. and K.M. A108; A130. The victims' parents reported the alleged abuse to the police (A131), and Detective Starrett was assigned to investigate the late-reported sexual abuse of M.M. and K.M. A 94. Detective Starrett performed an investigation (A194-98) after which Bryan was indicted and was extradited to Delaware from Brooklyn, New York, where he was living. A199. Because the alleged conduct occurred years before it was reported, there was no physical evidence that could support or contradict the claims. A201-02.

(2) *Bryan's Demands for an Interpreter*

A final case review was scheduled on May 24, 2024, but was not completed because Bryan requested an interpreter. A3-4; A17. A second final case review was attempted on June 3, 2024, but the parties were unable to complete a plea rejection colloquy because Bryan "demanded a Spanish interpreter, even though he does speak and communicate in English." A63. Indeed, the prosecutor stated that Bryan was "incredibly adamant" that he needed an interpreter, and his defense counsel did not contest that characterization. A63-64. Accordingly, a third final case review occurred on June 10, 2024, with an interpreter present. Bryan nonetheless spoke in English during that proceeding. A20-22. While Bryan's English vocabulary

appeared to be adequate, his syntax and grammar were only fair at best. *E.g.*, A26-27.

Trial was scheduled for July 8, 2024. The interpreter present at the final case review hearing inquired whether an interpreter would be needed for trial and was told that an interpreter would be required. A28-29. In response to a question from the interpreter, the judge confirmed that, if an interpreter is required, Bryan "has to speak all in Spanish. It's all or nothing. . .." A30. Bryan said that he wanted to speak in both languages, but the interpreter said that he/she would ask to be recused if that occurred. A30. Bryan's counsel made no argument in favor of dual language testimony, and no legal argument was made on the subject. A30.

On July 8, 2024, the parties appeared for what was supposed to be the first day of trial, but no interpreter was available. A62-63. The parties discussed whether the trial could go forward without an interpreter. A63. The State indicated that it would have reservations about proceeding without an interpreter because Bryan had been "incredibly adamant" that he needed an interpreter (A63-64), and a prior case review on June 3, 2024, could not proceed because Bryan "demanded" a Spanish interpreter, "even though he does speak and communicate in English." A63. Bryan's counsel did not disagree. Rather, he confirmed that "at final case review [Bryan] did request an interpreter" and that he "also requested one for trial" even

though defense counsel had communicated with him in English. A65. As a result, the trial was continued to a later date when an interpreter would be available. A65.

(3) *Bryan's Motion for Relief from Prejudicial Joinder*

On July 5, 2024, the Friday before the scheduled July 8, 2024 trial, Bryan filed a Motion for Relief from Prejudicial Joinder, seeking separate trials of the offenses involving K.M. and M.M. A33-43. In the motion Bryan argued that "[t]he two sets of charges in this case are too remote in time to be tried together therefore severance is appropriate" (A40), and that, "[i]n addition, there are some differences in the conduct alleged" – namely, that K.M. alleged digital penetration and M.M. did not. A40.

The State responded on Sunday, July 7, 2024, the day before trial, arguing that because of the similarity of the conduct alleged, Bryan had failed to meet his burden of demonstrating substantial injustice and unfair prejudice from denial of a motion to sever. A445-51. Specifically, the State argued that, under *Getz v. State,*[3] each victim's testimony would be admissible in the trial pertaining to the other victim's abuse because the testimony would establish a pattern of behavior by the defendant, that he had access to the children, timeline confirmation and relationship status among the family and the defendant, and would also establish motive, opportunity

[3] *Getz v. State*, 538 A.2d 726 (Del. 1988).

intent, lack of mistake, modus operandi, and state of mind. A49. The State also argued that the crimes were not too remote in time from one another, particularly because the events all occurred when each of the girls was approximately 9 years of age. A49.

Because of timing of the motion, the trial court was forced to issue a ruling on July 8, 2024, the intended start of the trial. In response to a question from the trial judge, Bryan admitted that his "major argument" was that the crimes were too remote in time, although there were some differences in the conduct alleged. A57.

The court rejected Bryan's arguments, finding that, in view of the "totality of the circumstances, motive, opportunity, intent and *modus operandi*," the "slight differences" in the conduct alleged would not be enough to warrant separate trials. A58. The court also rejected Bryan's remoteness argument, noting that the crimes were similar in nature and in time, and were reported within a day of each other. A60. The court further noted that it would "put that in a memo that we didn't have time to really write because of the filing and the time of the trial." *Id.* The trial court issued that Memorandum on October 9, 2024. A 288-297.

D. The Trial Testimony

(1) *The State's Case*

The evidence presented at trial established that the victims' mother, Fatma Jalloh, came to know Bryan through a family friend. A95. Fatima hired Bryan to

do work at the family's home in Claymont, Delaware, redoing a powder room into a bathroom, and then converting the garage to an extra room, in 2009 and 2010. A96; A126. Over time, Fatima became friendly with Bryan. A97. Bryan, who lived in New York, complained about staying with a friend whose wife was "mean." A98. Fatima was "feeling bad for him" so she started letting him stay at her house when he was in Delaware. A98. Bryan became "family" to the Mansary family, with the children calling him "Uncle Bryan." A97; A128; 143; 165. Bryan called K.M. "KaiKai." A103; A113; A166. Initially, when staying in the Mansary home, Bryan would sleep on a couch in the family living room, but after the garage was converted into a bedroom, he would stay in that room. A100; A127. Bryan stayed with the Mansary family when he was working on their house, and also when he was working on other projects in Delaware. A101, A111. When he was not in Delaware, Bryan would often speak to Fatima on the phone and would talk to M.M. and K.M. as well. A102.

Fatima and her husband, Yembah, were both nurses. A94; A105; A128. They tried to protect their children by staggering their shifts so that one of them would always be at home. A105; A110; A128-29. Neither Fatima nor Yembah suspected that Bryan had acted improperly toward M.M. or K.M. (A103), and when his abuse was reported to them, they felt somewhat guilty for not having protected their daughters from him. A102; A131.

As noted previously, Bryan's abuse of M.M. and K.M. came to light in 2021, as a result of conversations that the family's pastor had with M.M. and K.M. *See* p. 6, *supra*. M.M. testified that she did not realize as a 9-year-old that Bryan's conduct was inappropriate. A147-48. When she did realize it a few years later, she did not tell anyone because her mom had a good relationship with Bryan and might not believe her. A148-49. And, she did not want to impair their friendship. A159. K.M. testified that she never told anyone about her abuse previously because "I didn't really have anybody that I felt comfortable talking to like that." A179. She "definitely didn't feel comfortable" talking to her dad about it, and she felt if she told her mom, "it would hurt her a lot and I didn't want to see her like trying to blame herself for it." A179.

M.M. testified that in 2010 or 2011, when she was 9 or 10 years old, Bryan engaged her, in the downstairs part of their split-level house, in what he called a "tickle game" but that "didn't really involve too much tickling." A143-47. Instead, it involved Bryan caressing her breast and vaginal areas with his hands, both over and under her clothing. A143-45. M.M. said that Bryan's touches on her body made her feel "uncomfortable," but that as a 9-year-old, she did not realize that the touches were inappropriate. A147. But, after the incident, she "started to distance myself" so that Bryan would not feel like he could do it again. A148; A160.

K.M. testified that Bryan touched her inappropriately in two incidents in 2014, when she was 9 years old. A166. Bryan was downstairs in the guestroom, the same room in which he had earlier had inappropriate sexual contact with M.M. A168. As K.M. went to take a shower, Bryan told her that he had a surprise for her when she got out of the shower. *Id.* When K.M. got out of the shower she went to the guestroom, and Bryan told her to lay down. A169. Bryan was laying down next to her wearing boxer shorts. *Id*. He said that she should not say anything to anyone, and then started rubbing her vaginal area with his hands. A170. He eventually tried to digitally penetrate her vagina, which caused her pain. A170. Bryan partially penetrated her vagina, but did not succeed in putting his full finger inside her body. A181; A189-90. During that incident, K.M. touched Bryan's penis with her hands, over his boxer shorts. A172-73.[4] The incident ended when K.M.'s younger sister came down to the living room to watch TV. A173.

A second incident occurred the following day, in the same guestroom. A174. Bryan was in the house with K.M. and her little sister. Both of K.M.'s parents were work, and K.M.'s older sister (M.M.) was also out of the house. A174. Bryan and

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[4] The prosecutor had to refresh K.M.'s recollection as to whether her touching of Bryan's penis occurred during the first incident or the second incident. At trial, K.M. testified that she thought that her touching of his penis had not occurred during the first incident. A171. But she was shown the transcript of her interview with Detective Starrett in 2021, which refreshed her recollection that the touching in fact occurred during the first incident, not the second incident. A172.

K.M. were play fighting, but K.M. started to notice that the play fighting was getting sexual, with Bryan touching her breast area and her butt and grabbing her in "like aggressive like sexual ways and putting me in positions that were just weird." A175. Then, when K.M.'s little sister went upstairs, Bryan put K.M. in sexual positions. A175. Although Bryan and K.M. both had their clothes on, K.M. could feel Bryan's penis through his pants as he was "like acting out as if we were having sex. It felt like very uncomfortable. And at one point I'm pretty sure his like the opening through his boxers he – his penis was outside of it and I felt it against me" as he was "thrusting." A175-76.

The second incident was the last time K.M. saw Bryan in person. A177. Bryan continued to talk to K.M.'s mom and he tried to talk to K.M., to get pictures of her, and to get her phone number, but she "brushed it off multiple times." A177. K.M. testified that Bryan's wanting to talk to her after the sexual incidents "just gave me like an icky feeling, especially like when he wanted to see pictures of my little sister." A177.

(2) *The Defense Case*

Bryan elected to testify in his defense. He was asked a total of sixteen questions on direct, comprising eleven questions about his biography and his relationship with the Mansary family (A210-214) and five questions (essentially three questions excluding duplicate questions) about whether he had touched M.M.

or K.M. inappropriately, or whether he asked either of them to touch him inappropriately. A214-16. Bryan flatly denied that he had touched either M.M. or K.M. in any improper way, and denied engaging in any tickling games. A215. In the course of his denial, Bryan said, with respect to K.M. "I never touched her, and you know, if I had touched her, there's videos all over that house. They said there's videos. There has to be a video of me touching her, and apart from that, if she said that I put my finger on her and she's a virgin, it has to break something." A215. In response to the question of whether he had ever asked or had any of the girls touch his private area Bryan responded: "At no moment have they touched my area. I'm going to speak to you sincerely. I'm big and I'm big, and if I were to show somebody something, they're going to remember. They would remember." A216.

(3) *The State's Rebuttal Case*

The State recalled Yembah Mansary, who testified that they never had security cameras inside of their house. A227-28.

E. The Verdict and Sentencing.

Closing arguments were presented on the morning of July 23, 2024. A254-277. After approximately 3 hours of deliberation, the jury returned a unanimous verdict finding Bryan guilty of all charges. A283-285.

Bryan's sentencing took place February 7, 2025. A289-309. Bryan demanded an interpreter at the sentencing. A5, DI 32. In addition to the attorneys'

remarks, the court heard a victim impact statement from K.M. A300-01. Bryan also addressed the court, partially through an interpreter and partially in English. A 304-308. Portions of Bryan's statements to the court in English were unintelligible. A 306-307.

Bryan was sentenced to a total of 50 years at Level V and the court ordered him to have no contact with any minor under the age of 18 or with the Mansary family and the victims, and to register as a sex offender. A 308-309. The court found that aggravating factors included a lack of remorse and undue depreciation of the offense. A309.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING BRYAN'S MOTION FOR RELIEF FROM PREJUDICIAL JOINDER.

Question Presented

Whether the trial court abused its discretion in denying Bryan's Motion for Relief from Prejudicial Joinder, and whether the trial court adequately stated the rationale for its decision. This question was preserved at A45-51.

Standard and Scope of Review

The denial of a motion for relief from prejudicial joinder under Delaware Superior Court Criminal Rule 14 is reviewed for abuse of discretion and will not be overturned unless the defendant makes an adequate showing of prejudice.[5] Where the offences charged are of the same general nature and show evidence of a *modus operandi*, severance is properly denied, even in the face of obvious prejudice to the defendant.[6] Bryan also asserts that the trial court erred in denying his motions without providing adequate reasons for its ruling when the ruling was issued, and instead issuing a memorandum opinion after trial. Bryan did not object to the form of the trial court's oral ruling below, nor did he object to the timing of the written

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[5] *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988).
[6] *Wood v. State*, 956 A.2d 1228, 1230, n. 3, (Del. 2008) (citing *Brown v. State*, 310 A.2d 870 (Del. 1973)).

ruling. Therefore, this Court may review those questions only for plain error.[7] 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."[8] "Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprived and accused of a substantial right, or which clearly show manifest injustice."[9]

Merits of Argument

On August 28, 2023, Bryan was indicted for committing sexual crimes against K.M., a child victim, for acts that occurred between December 1, 2014 and December 21, 2015, and for committing sexual crimes against M.M., a child victim, for acts committed between January 1, 2010 and January 1, 2012. The facts giving rise to the charges relating to the two victims were strikingly similar: K.M. and M.M. are sisters. Both were sexually assaulted when they were approximately 9 years old. Both sexual assaults occurred while Bryan was visiting the Mansary family at their home located at 123 Compass Drive, Radnor Woods, New Castle,

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[7] Supr. Ct. Rule 8; *e.g.*, *Wilson v. State*, 950 A.2d 634, 641 (Del. 2008).
[8] *Small v. State*, 51 A.3d 452, 456 (Del. 2012) (*quoting Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).
[9] *Wainwright*, 504 A.2d at 1100; *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981).

Delaware. Both sexual assaults occurred in the guestroom of that home. Both assaults involved Bryan luring the child into that room and then fondling her breasts and rubbing her vaginal areas.

For nearly ten months after the indictment, Bryan did not object to the joinder of the claims against M.M. and K.M., and accordingly, trial on both sets of claims was scheduled to begin on July 8, 2024.[10] On July 5, 2024, the Friday of the four-day Fourth of July weekend immediately preceding the scheduled trial, Bryan objected to the joinder of the claims for the first time, filing a Motion for Relief from Prejudicial Joinder.[11] The State responded to this motion two days later on July 7, 2024, the Sunday of the four-day weekend before the scheduled July 8 trial.[12] The Court heard argument on the motion on July 8, 2024, the morning that trial was scheduled to begin.[13]

Bryan asserts that "[t]he trial court made several statements during and after the arguments that appeared to indicate that the motion was denied."[14] Notwithstanding Bryan's characterization of the court's ruling, the court clearly

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[10] A25-26.
[11] A34-A41.
[12] A44-51.
[13] A56-60. In fact, the trial was postponed for one week because Bryan had demanded an interpreter and none was available on the scheduled July 8 trial date. A60-65.
[14] Op. Brf. at 2.

denied the motion, expressly rejecting Bryan's claim that the incidents of sexual abuse alleged against him were dissimilar in nature, and that they were too remote in time from each other to be tried in a single proceeding. As to the claim of dissimilarity, the court ruled:

> Okay. I've read everything you've submitted. And with regard to [the] slight differences, I think that if you look at the totality of the circumstances, motive, opportunity, intent and modus operandi, I think, as laid out by the State, would be a factor that under 404 (b) we would allow. So as far as that's concerned, I'm okay.[15]

As to the claim of remoteness, the court ruled:

> I'm not sure you can put a bright line factor on the time period. And I think the word "remote" is important. I think that these were reported, you know, within a day of each other. I think all the other circumstances that the State says that they will bring out in the evidence point to the fact that these crimes are similar and similar in time. So they weren't, quote, unquote, remote. We'll put that in a memo that we didn't have time to really write because of the filing and the timing of the trial. So we will continue with that.[16]

Bryan's lead argument on this appeal is that "[t]he 'adjudicative responsibilities' of the trial courts compel trial judges to 'state the reasons' for decision, 'no matter how briefly.'"[17] This argument lacks merit.

Bryan waited ten months to file his motion and then filed it on the Friday of a four-day Fourth of July weekend, just prior to a scheduled Monday trial. The very

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[15] A58.
[16] A60.
[17] OB 15, quoting *Holden v. State*, 23 A.3d 843, 846-47 (Del. 2011).

authority cited by Bryan expressly notes "the tremendous time burdens on our trial courts."[18] Subsequent decisions have recognized that "the duty to exercise discretion by a trial judge ***generally*** includes the duty to make a record to show what factors the trial judge considered and the reasons for his decision."[19] Here, the trial court's deferral of a more formal recitation of the reasons underlying his decision was necessitated by Bryan's own actions in filing the motion on the eve of trial during a holiday weekend and requiring a ruling literally minutes after the motion was argued on the morning of July 8. In these circumstances – which were Bryan's own making – a lengthy recitation of the reasons for the court's ruling was neither possible nor required.

In any event, the trial court did provide the basis for its ruling. It held that the evidence identified by the State would indicate that the crimes were "similar," that they were reported "within a day of each other," and in the circumstances, were not "remote" in a way that would require separate trials.[20] This was a sufficient explanation of the court's denial of the prejudicial joinder motion in any

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[18] *Holden* 23 A.3d at 846-47, *quoting Husband M v. Wife D*, 399 A.2d 847, 848 (Del 1979), *quoting Ademski v. Ruth*, 229 A.2d 837 at n.1 (Del. 1967).
[19] *Story v. Camper*, 401 A.2d 458, 466 (Del. 1979) (emphasis added; citations omitted).
[20] A58, 60.

circumstances, and was certainly an adequate explanation in view of the extraordinary time pressures created by Bryan's last-minute filing of his motion.

The trial judge's denial of the prejudicial joinder motion was also a proper exercise of discretion. Under Superior Court Criminal Rule 8(a), two or more different offenses may be joined in the same indictment if, *inter alia*, "the offenses charged are of the same or similar character" or are "based on . . . two or more acts or transactions connected together or constituting parts of a common scheme or plan."[21] Such joinder "is designed to promote judicial economy and efficiency, provided that the realization of those objectives is consistent with the rights of the accused."[22] Under Superior Court Criminal Rule 14, a defendant may move for severance if he "is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together."[23]

The courts have identified three types of prejudice that a defendant may suffer as a result of joinder of claims:

1. The jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find;

2. The jury may use evidence of one of the crimes to infer a general criminal disposition of the defendant in order to find guilt of the other crime or crimes; and

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[21] Superior Ct. Crim R. 8(a).
[22] *Sexton v. State*, 320 A.2d 713, 717 (Del. 1974), *quoting Mayer v. State*, 320 A.2d 713, 717 (Del. 1974).
[23] Superior Ct. Crim R. 14.

3. The defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.[24]

Here, Bryan's motion complained of prejudice only in the first two categories.[25]

As Bryan recognized below, "[c]ourts have consistently held the crucial factor in the analysis is whether one crime would be admissible in the trial of the other crime."[26] In making that determination, Delaware courts have considered six factors set forth in *Getz v. State*[27], as follows:

1. The evidence of the other crime must be material in issue or ultimate fact in dispute in the case.

2. The evidence must be introduced for a purpose sanctioned by Rule 404(b).

3. The other crimes must be proved by evidence which is plain, clear and conclusive.

4. The other crime must not be too remote in time from the charged offense.

5. The Court must balance the probative value of such evidence against its unfairly prejudicial effect as required by D.R.E. 403.
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6. Because such evidence is admitted for a limited purpose, the jury should be instructed concerning the purpose for its admission as required by the D.R.E 105.[28]

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[24] *Wiest v. State*, 542 A.2d at 1195; *State v. McKay*, 382 A.2d 260, 362 (Del. Super. 1978).
[25] A40-41.
[26] A37.
[27] *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).
[28] A38, citing *State v. Conaway*, 2019 WL 3431594, at *7 (Del. Super. July 30, 2019), *citing Getz v. State*, 538 A.2d 726, 724 (Del. 1988).

In response to a question from the trial court, Bryan admitted that his "major argument" supporting his severance motion related to *Getz* factor four, that the two crimes were too remote in time to be tried together.[29] Bryan stated that he had "a bit of an issue with whether it meets 403, whether there was a common plan or scheme given that there are slight differences in the facts of the way both touchings happened."[30]

On appeal, Bryan argues that prongs two, three and four of *Getz* weigh in favor of severance, and that "prejudice [was also] demonstrated by the clear embarrassment that Bryan suffered when, in attempting to address the inconsistent testimony from K.M. about whether his penis had been exposed, he testified that there would have been no confusion or ambiguity about whether his penis was exposed" because his penis was so large.[31] Bryan argues that "[h]ad the allegations been severed, that testimony would likely not have been presented at a trial regarding the charges involving M.M."[32] The State will address each of Bryan's arguments in turn.

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[29] A57; A40-41.
[30] A57; A40-41.
[31] OB 20-21, citing A216.
[32] Op. Brf. 21.

(1) ***The trial court properly ruled that the crimes were sufficiently similar in nature to satisfy D.R.E 404***

D.R.E. 404 provides in relevant part as follows:

(b) Crimes, Wrongs, or Other Acts.

> **(1) Prohibited Uses.** Evidence of a crime, wrong or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> **(2) Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident.[33]

Delaware courts have consistently held that evidence of a prior crime or wrong is admissible to show that the defendant had a *modus operandi*, and that the crime for which he was charged was consistent with prior wrongdoing in that it followed the same *modus operandi*.[34]

Moreover, where (as here) the crimes are highly similar in nature, severance will be denied apart from a *modus operandi*/D.R.E. 404 analysis. *Wood v. State*,[35]

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[33] D.R.E. 404(b).

[34] *E.g.*, *Gibson v. State*, 2025 WL 1514413, at *8 (Del. May 28, 2025) (multiple robberies of robberies of money-making enterprises and shooting in the head); *Pitts v. State*, 1988 WL 113303, at *3 (Del. Sept 27, 1988) (multiple thefts "of the same general nature"); *Moore v. State*, 1995 WL 67104, at *2 (Del. Feb. 17, 1995) (charges that the defendant had intercourse with one boy and molested another boy by performing fellatio); *Brown v. State*, 310 A.2d 870, 871 (Del. 1973) (multiple counts of selling drugs which were "of the same general character").

[35] 965 A.2d 1228 (Del. 2008).

is instructive. In that case, Wood was accused of sexually abusing the child of his girlfriend from 1996 to 1998, and of sexually abusing his stepdaughter from 2000 to 2005.[36] Wood contended:

> years separated the alleged offenses involving different victims and that three categories of prejudice are present in this case because: (1) the quality, nature and strength of the two cases were different such that the jury would be unable to judge the evidence separately; (2) by trying the two complaining witnesses together, "there is palpable invitation for the jury to infer" Wood has "criminal propensity for such acts;" and, (3) holding one trial did not allow him to conduct his defense fairly because a single trial format deprive Wood of the ability to testify regarding one of the sets of charges.[37]

In affirming the trial court's denial of Wood's severance motion, the Court held that "our focus is not on a *Getz* analysis of the admissibility of prior bad acts under D.R.E. 404(b) under a modus operandi theory."[38] Instead, the Court held that the offenses were properly joined in the indictment because "[t]he two separate series of offenses were similar and can suggest parts of a common scheme or plan."[39] The court noted that, as in the present case, "[t]he evidence indicated that both complainants were of similar ages at the time of the alleged abuse."[40] Also, "both were deceived into performing sexual acts, one by ice cream, and the other by a

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[36] *Id*. at 1229.
[37] *Id.* at 1230.
[38] *Id*. at 1232.
[39] *Id.*
[40] *Id.*

doctor's note. They were both blindfolded (with black blindfolds) on some occasions. Wood showed both girls pornography to teach them how to do the sexual acts he wanted them to do. Wood made various threats to each of the girls to ensure they would not tell anyone of the alleged abuse. These, now proven facts imply a common scheme or plan, or at the very least are sufficiently of a similar nature or character to permit joinder."[41]

These same factors support the trial court's exercise of discretion in denying the severance motion here. As in *Wood*, the victims were of similar (here, essentially identical) ages. The way Bryan approached the victims was also identical: in both cases, Bryan used his close relationship with the victims, who regarded him as family and called him "Uncle Bryan," to lure the victims into the guestroom in which he stayed while visiting the Mansary family. And, the acts of sexual abuse were nearly identical: In both cases, he groped the girls, rubbing their chest and vaginal areas. Given these circumstances, joinder was appropriate under *Wood*. And, if analyzed under *Getz*, the second prong of that decision was satisfied.

(2) *Bryan did not raise prong 3 of Getz below; in any event, this prong is satisfied*

Prong three of *Getz* requires that "[t]he other crimes must be proved by evidence which is plain, clear and conclusive." Bryan did not raise this alleged

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[41] *Id.*

concern in the trial court; indeed, he waived it when, in answer to the judge's question about which of the *Getz* prongs he was contesting, he did not identify prong three.[42] While a showing of "plain error" could potentially revive this appeal, Bryan does not even assert "plain error," much less meet his burden of demonstrating its existence.

In any event, prong three of *Getz* is satisfied here. Each of the four Mansary family members who testified gave clear and consistent about the relationship between Bryan and the Mansary family, and in particular, his relationship with M.M. and K.M., who regarded him as family.[43] They also gave clear and consistent testimony about Bryan's opportunity to sexually abuse M.M. and K.M., testifying that Bryan stayed at the Madison for several days at a time, and that the guestroom in which Bryan stayed in the split-level house was downstairs from the upstairs in which the victims' parents spent most of their time.[44] And, M.M. and K.M. each gave clear and concise test about their relationship with "Uncle Bryan," how he lured them into the guestroom, and how he groped and fondled them once they were there.[45]

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[42] A57.
[43] See p. 11, *supra*.
[44] See p. 11, *supra*.
[45] See pp. 12-14, *supra*.

Bryan appears to contend that because certain charges initially alleged as to M.M. were dropped, the requirement that the evidence be "plain, clear and conclusive" was somehow not met.[46] This is a *non sequitur*. Certain charges relating to M.M. were dropped by the State due to insufficient evidence, and these charges were never presented to the jury or otherwise mentioned at trial. The requirement of "plain, clear and conclusive" evidence applies only to charges that *are brought*. The fact that there was not "plain, clear and conclusive" evidence for other charges, and those charges therefore were not pursued, is irrelevant.

Bryan makes no assertion that the evidence as to the charges asserted at trial (as opposed to those initially included in the indictment but subsequently dropped) was not "plain clear and conclusive." Therefore, prong three of *Getz* has been satisfied.

(3) *The trial court properly ruled that the two offenses were not "remote" for purposes of prong four for Getz*

Bryan challenges the "remoteness" prong of *Getz* only by seeking to distinguish the present case from the *Kendall v. State*[47] case relied upon in the trial court's Memorandum Opinion.[48] Even if *Kendall* can be distinguished on its facts,

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[46] Op. Brf. at 20.
[47] *Kendall v. State,* 726 A.2d. 1191 (Del. 1999).
[48] Op. Br. 18.

the legal principles it asserts, which have been recognized in many cases, are fully applicable here.

Notably, under *Kendall* and numerous other authorities, evidence is too remote in time "only where there is no visible, plain or necessary connection between it and the proposition eventually to be proved."[49] Here, there was an obvious connection between the crimes alleged against M.M. and those alleged against K.M., as they were nearly identical in nature. And, as *Kendall* and other authorities uniformly hold, there is no "bright line rule" as to when a related crime or wrongful act is too remote in time to be introduced at a criminal trial.[50] Indeed, in determining whether a prior crime or wrongful act is to remote to be admissible at trial, the Court "in the past has analogized the 'too remote' factor in *Getz* to the ten-year time limit contained in Rule 609(b) governing impeachment by evidence of conviction of a crime."[51] Thus, in analyzing remoteness under the *Getz* guidelines,

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[49] *Kendall v. State*, 726 A.2d at 1195, *quoting Lloyd v. State*, 1991 WL 247737, at *3 (Del. Nov. 6, 1991); *accord, Andreavich v. State*, 2018 WL 3045599, at *2 (Del. July 19, 2018); *Marvel v. State*, 2007 WL 2713271, at *2 (Del. Sept 18, 2007). *Taylor v. State*, 777 A.2d 759, 768 (Del. 2001).
[50] *Kendall*, 726 A.2d at 1195-96; (Del. July 7, 1995); *Allen v. State*, 644 A.2d 982, 988 (Del. 1994); *Trowbridge v. State*, 647 A.2d 1076, 1078 (Del. 1994).
[51] *Kendall*, 726 A.2d at 1196; *Allen*, 644 A.2d at 988; *Trowbridge*, 647 A.2d at 1078; *Santini v. State*, 1995 WL 420802, at *3 (De3l. July 7, 1995).

"this Court usually uses ten years as the standard for deciding whether evidence of the prior crime is admissible."[52]

Here, Bryan's sexual assaults of M.M. and K.M. were highly similar in nature and occurred four years apart. Under established law, these acts were not so remote in time as to be inadmissible under the fourth prong of *Getz*.

(4) *Bryan did not raise his "embarrassment" claim below, and neither the State nor the Court could have anticipated it.*

Bryan testified, in response to a question from his own attorney, that:

> At no moment have [M.M. or K.M.] touched my [private] area. I'm going to speak to you sincerely. I'm big and I'm big, and if I were to show somebody something, they're going to remember. They would remember."[53]

Bryan now asserts that he suffered "clear embarrassment" as a result of this testimony, and had the allegations been severed, "that testimony would likely not have been presented at a trial regarding the charges involving M.M."[54]

Bryan's claim of "embarrassment" was not asserted before the trial court, and therefore, it may not be asserted now in the absence of a showing of "plain error." Bryan has not even attempted to satisfy this burden, and his "embarrassment" claim must therefore be rejected.

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[52] *Marvel v. State*, 2007 WL 2713271, at *2.
[53] A215-16.
[54] Op. Brf. at 21.

In any event, any embarrassment the Bryan suffered from his testimony was a problem of his own making. Nothing in this case required him to testify about the size of his genitals, and no one asked him about that. Instead, it was information he volunteered in response to a different question from his own attorney.[55] Moreover, neither the State nor the trial judge could possibly have anticipated that Bryan would give such testimony, and therefore could not reasonably have considered that testimony in opposing the severance motion (in the case of the State) or in denying that motion (in the case of the trial court). In the circumstances, Bryan's self-inflicted "embarrassment" cannot provide a basis to claim that the trial court abused its discretion in denying his motion for relief from prejudicial joinder.

[55] *Id.* His attorney's question was: "Did you ever ask or have any of the girls ever touched your private area."

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN REQUIRING BRYAN TO TESTIFY UTILIZING THE INTERPRETER THAT HE DEMANDED.

Question Presented

Did the court abuse its discretion in requiring Bryan to testify utilizing the interpreter that he demanded?

Standard and Scope of Review

Decisions on the use of an interpreter are reviewed for abuse of discretion.[56] Because Bryan did not raise this issue below, this Court may review that issue only for plain error.[57] 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."[58] "Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprived and accused of a substantial right, or which clearly show manifest injustice."[59]

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[56] *DeJesus v. State*, 2005 WL 65865, at *1 (Del. Jan. 10, 2005).
[57] Supreme Ct. Rule 8; *e.g., Wilson v. State*, 950 A.2d 634, 641 (Del. 2008).
[58] *Small v. State*, 51 A.3d 452, 456 (Del. 2012) (*quoting Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986)); *Dutton v. State*, 452 A.2d 127, 146 (Del. 1982).
[59] *Wainwright*, 504 A.2d at 1100; *Bromwell v. State*, 427 A.2d 884, 893 n.12 (Del. 1981).

Merits of Argument

The trial court properly exercised its discretion and did not plainly err when it required Bryan to testify in Spanish using an interpreter. The record reflects that Bryan was told at a pretrial hearing that if he requested an interpreter at trial, "he has to speak all in Spanish. It's either all or nothing."[60] Bryan never objected to this ruling, and the record reflects that Bryan thereafter was "incredibly adamant" that he needed an interpreter for trial, and he demanded one.[61] Indeed, the trial was postponed from July 8, 2024 to July 18, 2024 because an interpreter was not available on scheduled day of trial (July 8).[62]

At trial, Bryan began his testimony utilizing the interpreter, but soon began to answer questions in English.[63] After a sidebar, the court instructed Bryan that "we have to hear [your answers] through the interpreter."[64] Neither Bryan nor his counsel objected to this ruling; instead, Mr. Bryan said "Yes, that's true."[65] Because Bryan did not object to the judge's interpreter ruling in the court below, his claim is

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[60] A30.
[61] A63; A61.
[62] A65.
[63] A211.
[64] A212.
[65] A212.

reviewed for plain error.[66] Bryan bears the burden of demonstrating that the trial court's ruling that he must testify only in Spanish through an interpreter constituted plain error, and that he suffered prejudice as a result.[67] Here, Bryan makes no attempt to meet that burden — indeed, he does not even assert that the trial court's ruling that he must testify in Spanish constituted plain error.

Nor could such an argument succeed. Bryan addressed the Court in English several times in pre and post-trial proceedings, and his English was spotty at best — his grammar and syntax were poor, and in numerous instances his words were unintelligible.[68] Moreover, Bryan expressly demanded to testify through an interpreter; had the court denied this request, Bryan would no doubt be asserting that the failure to allow him to testify in Spanish was prejudicial error.

And in all events, the claim that Bryan was prejudiced by being required to testify in his native language makes no sense. That is particularly so where, as here, Bryan was asked a total of 16 questions in his direct examination, most of which were background, and only three of which (excluding duplicate questions) addressed the conduct for which he was charged. Finally, Bryan provides no explanation of

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[66] Supreme Ct. Rule 8; *Hare v. State*, 2006 WL 2690171, at *2 (Del. Sept. 18, 2006) (claim that trial court erred in allowing translation services by an uncertified trial was not raised below, and was therefore reviewed only for plain error).
[67] *Palmer v. State*, 326 A.3d 710, at *1 (Del. Aug. 27, 2024); *Williams v. State*, 98 A.3d 917, 922 (Del. 2014)
[68] A20; A306; A307.

how his testimony in English might have differed from the Spanish testimony that was then translated by the interpreter. In these circumstances, Bryan has failed to meet his burden of demonstrating that the trial judge's ruling that he must testify in Spanish utilizing the interpreter to translate his answers into English was an abuse of discretion, and he is certainly not demonstrated that the judge's ruling constituted plain error.

Bryan's final claim is that the problems caused by requiring him to testify using an interpreter were exacerbated by the failure to *voir dire* the jury members on whether they would be influenced by Bryan's use of an interpreter, and the failure of the trial judge to provide appropriate jury instructions that would have ensured that jurors were not unfairly prejudiced by Bryan's use of an interpreter.[69] But Bryan never requested *voir dire* inquiry about use of an interpreter, or that the jury be instructed about Bryan's use of an interpreter. Accordingly, this Court can consider those issues only if Bryan asserts that the alleged failures of the trial court constituted "plain error" and he then meets the burden of showing the type of prejudice required to satisfy the "plain error" standard. Here, Bryan has not even asserted "plain error," and he has offered no argument that would allow the Court to conclude that the plain error standard of review has been satisfied.

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[69] Op. Brf. at 24-26.

Bryan cites Supreme Court Administrative Directive 107 and Delaware Judiciary Language Access Plan of 2021, as well as this Court's decision in *Diaz v. State*[70], to argue that additional *voir dire* and jury instructions were required.[71]

At their root, these authorities stand for the proposition that the court should make an effort to identify juror bias in all criminal cases, and they identify a specific source of bias (a non-English speaking defendant) and suggest specific *voir dire* questions that can be used to identify that bias. Although the trial court did not ask the specific questions of Administrative Directive 107 or of *Diaz* regarding the use of a foreign language interpreter, it nonetheless inquired as to juror bias when it asked the potential jurors whether they had "any bias or prejudice either for or against the State or for or against the defendant" and whether there is any reason they "cannot give this case your undivided attention and render a fair and impartial verdict?"[72] In addition, consistent with *Diaz*, jurors were instructed that "if any of you know the language that you hear [Bryant and the interpreter] talking between themselves, please only go by the interpreter's communication." A210.[73]

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[70] 743 A.2d 1166, 1173 (Del. 1999).
[71] Op. Brf. 23-26.
[72] A75.
[73] *Diaz* held that jurors should be instructed that "[a]lthough some of you may know the non-English language used, it is important that all jurors consider the same evidence. Therefore, you must base your decision on the evidence presented in the English (interpretation) (translation). You must disregard any different meaning of

In the circumstances here, where Bryan failed to raise these issues in the trial court where they could have been addressed, Bryan has the burden of demonstrating that the trial court's failure to engage in different or additional *voir dire*, or to give further jury instructions, constituted "plain error" requiring reversal of Bryan's conviction. Bryan has failed to meet this burden.

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the non-English words"). 743 A.2d at 1175, *quoting* Model Crim. Jury Instr. 9th Cir. §§ 1.12, 3.18.

CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of Bryan's Motion for Relief from Prejudicial Joinder and should affirm the judgment of that court.

Respectfully submitted,

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Date: September 19, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE BRYAN,	§	
	§	
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	No. 101, 2025
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

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