



IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE RICHARDS,	)	
	)	
Defendant-Below,	)	
Appellant	)	
	)	
v.	)	No. 152, 2026
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S CORRECTED OPENING BRIEF

NICOLE M. WALKER [#4012]
ANTHONY CAPONE [#5315]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5121

Attorneys for Appellant

DATED: August 19, 2026

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NATURE AND STAGE OF THE PROCEEDINGS

After an initial indictment, proceedings, and a denial of a motion to suppress,¹ Richards was charged on May 12, 2025 by re-indicted with Drug Dealing (cocaine), Possession of a Firearm During the Commission of a Felony, Possession of a Firearm By a Person Prohibited, Possession of Ammunition By a Person Prohibited, Receiving a Stolen Firearm (“RSF”), and two counts of Illegal Possession of a Controlled Substance.² Richards then filed a Motion to Sever the “person prohibited” charges from the rest of the case. The State did not oppose the motion, and it was granted.³

On July 14, 2025, Richards began the first of two trials with jury selection. At the end of the first trial, he was found guilty of three illegal drug possession charges and the RSF charge. The same jury then immediately convicted him after a second trial of both “person prohibited” offenses. Richards later filed a Motion for Judgment of Acquittal on the RSF charge; following the State’s response, the judge denied the motion.⁴ Later, Richards was sentenced to 10 years in prison followed by probation.⁵ This is his Opening Brief in support of a timely-filed appeal.

¹ A 3, 4.

² A 5, 10.

³ A5, 15.

⁴ A311; Denial of Richards’ Motion for Judgment of Acquittal, Ex A.

⁵ See March 27, 2026 Sentence Order, Ex. B.

SUMMARY OF THE ARGUMENT

1. The trial judge violated Richards' right to a fair trial by an impartial jury under both the state and federal constitutions by impeding the truth-finding function of jury *voir dire* and by abandoning his duty to assess juror bias, based on credibility determinations, during a critical part of the trial.

2. No rational trier of fact could find Richards guilty beyond a reasonable doubt of receiving a stolen firearm, as the state failed to present sufficient evidence that he knew or believed that the firearm had been acquired under circumstances amounting to theft.

3. The prosecutor violated Richards' due process rights under the state and federal constitutions when he misrepresented evidence and when he denied Richards a full and fair opportunity to defend against the state's charge of receiving a stolen firearm.

STATEMENT OF FACTS

At 6:00 a.m. on July 29, 2024, members of the Special Operations Response Team, a joint task force of the FBI and the Delaware State Police, stormed into 419 East Second Street in Wilmington, Delaware to execute a search warrant as part of a drug investigation of Andre Richards (“Richards”).⁶ While Richards and an adult female were found in the second-floor master bedroom, his son, a woman and a young child were awakened by police in the room across the hall. On the third floor, police apprehended two juveniles. All of the individuals were secured with flex ties and hauled downstairs and detained in the family room.⁷

Before the search began, Detective Macauley took Richards to the kitchen and interrogated him. Macauley testified that Richards was cooperative.⁸ When the detective asked whether there was “anything in the house[,]” Richards told him “exactly where [they]’d find some cocaine” when he “described” that “in the upstairs master bathroom in jean pockets in like a hamper [...] there would be a little bit of coke[.]”⁹ The detective then asked

⁶ A53, 57-58, 60, 62, 94, 103, 132.

⁷ A54-55, 59, 63.

⁸ A87.

⁹ A64, 87, 95.

if there were any firearms in the house, and, Macauley testified, Richards responded that there were none, “that he’s aware of.”¹⁰

After this interrogation, police began to search the house for evidence of drug dealing. As Richards promised, they found cocaine in the pocket of a pair of jeans inside a hamper in the master bathroom on the second floor.¹¹ Outside that bathroom, on the floor of the master bedroom, police also found a wallet containing Richards driver’s license, a credit card with his name on it, and 32 buprenorphine strips. They also found mail addressed to Richards on the nightstand next to the bed. Also in the master bedroom was a man’s shirt that appeared to police to be Richards’ size.¹²

Police located a dresser in the master bedroom. On top of the dresser was a man’s gold watch. When they looked inside the top drawer, they found a black Glock 17 semiautomatic handgun. It was loaded with fifteen .9 mm rounds in the magazine and one round in the chamber.¹³ Also in the drawer were male clothing, a baseball hat, and a prescription bottle containing four

¹⁰ A64-64.

¹¹ A66-67.

¹² A69-72, 74.

¹³ A54, 103.

buprenorphine pills.¹⁴ In the master bedroom closet, police found a .32 caliber round, and in the bedroom across the hall, they found a .40 caliber round.¹⁵

Finally, police found a bag of fentanyl all the way downstairs near Richards' phone on the ground next to the couch in the "family room, which was once you come into the residence that very first room[.]"¹⁶ Police never discovered any prescriptions in Richards' name for any narcotics found in the home.¹⁷ Finally, there was no packaging material, large amounts of cash, scales, or other sale paraphernalia in the home.¹⁸

After the search, police interrogated Richards again. He acknowledged that he sleeps on the side of the bed in the master bedroom near the dresser and nightstand. He admitted to using a little bit of every type of narcotic, specifically crack, heroin, and buprenorphine. Richards also admitted that he gave drugs to others. But, he stated that no one else in the house used drugs.¹⁹

Richards denied possessing the firearm. According to Macauley, when asked to explain how the firearm got in his dresser drawer, Richards hypothesized that "his son, Andre Richards, Jr., who was incarcerated at the

¹⁴ A75-77, 98.

¹⁵ A81-83, 89-90.

¹⁶ A 68-69, 78-80, 89.

¹⁷ A78-79, 84.

¹⁸ A68-69.

¹⁹ A82-84, 86.

time of this search warrant, must have left the firearm in his dresser drawer.”²⁰

Later in the interview, Richards proffered that “while [the] SWAT team was hitting the front door of the residence, one of the juvenile males that he described as a chubby light-skinned black male ran down from the third floor and potentially, he assumed, put the firearm into the dresser drawer.”²¹ Police found no evidence of how Richards may have come to possess the firearm.

Detective Diprima attempted to obtain fingerprints from the firearm but retrieved none of value. He also swabbed the firearm for DNA and sent the samples to the Division of Forensic Services (“DFS”) for comparison to a sample of Richards’ DNA. DFS was unable to obtain any profile consistent with Richards on the firearm.²² However, DFS was able to identify the three seized substances as cocaine, buprenorphine, and fentanyl.²³

Finally, police ran the serial number for the seized firearm through a national and local database and discovered that it had been reported stolen to the New Castle County Police Department on March 28, 2024, four months before it was seized.²⁴ There was no evidence of how the gun was stolen.

²⁰ A85.

²¹ A85.

²² A116-119, 155-160.

²³ A240-243.

²⁴ A85-86, 90-91.

I. THE TRIAL JUDGE VIOLATED RICHARDS’ RIGHT TO A FAIR TRIAL BY AN IMPARTIAL JURY UNDER BOTH THE STATE AND FEDERAL CONSTITUTIONS BY IMPEDING THE TRUTH-FINDING FUNCTION OF JURY *VOIR DIRE* AND BY ABANDONING HIS DUTY TO ASSESS JUROR BIAS, BASED ON CREDIBILITY DETERMINATIONS, DURING A CRITICAL PART OF TRIAL.

Question Presented

Whether the trial judge violated Richards’ right to an impartial jury under both the Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution when his comments to potential jurors during *voir dire* minimized their duty to respond truthfully to questions and when he left the courtroom without receiving their responses to the *voir dire* questions, leaving that duty to the bailiffs who were then empowered to excuse those who gave them “yes” answers to the questions.²⁵

Standard And Scope Of Review

When an issue related to the fundamental right to a fair trial by an impartial jury is not raised below, it is reviewed for plain error.²⁶ Here, the Court must determine whether: “(a) the trial record is adequate; (b) the claim[] w[as] forfeited or waived; (c) the claimed [error] violates current law; and (d)

²⁵ *Delaware Supreme Court Rule 8.*

²⁶ *See Ushery v. State*, 346 A3d 621, 625 (Del. 2025).

there is a reasonable probability that, but for the [violation of Richards’ right to a fair trial], the outcome would have been different.”²⁷

Argument

Richards has a fundamental right to a fair trial by an impartial jury under both the Sixth Amendment of the United States Constitution and Article I, § 7 of the Delaware Constitution. Juror impartiality ensures the fairness of a defendant’s trial and “assure[s] the overall integrity of the judicial process.”²⁸ *Voir dire* examination of prospective jurors is conducted so that the court and the parties can obtain “sufficient information” to select only jurors who “can render an impartial verdict based on the evidence developed at trial and in accordance with the applicable law.”²⁹ Thus, *voir dire* “is critical to protecting a defendant’s right to a fair trial by an impartial jury.”³⁰

The record is adequate for this Court to conclude that the judge violated Richards’ right to a fair trial by an impartial jury. His remarks that impeded the truth-seeking function of the process are in the transcripts. And, his abandonment of his key duty of determining juror impartiality is also recorded in the transcript. Thus, “the State was not disadvantaged by the lack of

²⁷ *Morales-Garcia v. State*, 2026 WL 278899 *7 (Del. Feb. 3, 2026).

²⁸ *Mu’Min v. Virginia*, 500 U.S. 415, 431 (1991); *Knox v. State*, 29 A.3d 217, 223 (Del. 2011). See *Schwan v. State*, 65 A.3d 582, 588 (Del. 2013).

²⁹ *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985).

³⁰ *Banther v. State*, 783 A.2d 1287, 1289-1290 (Del. 2001).

record.”³¹ Further, Richards did not “knowingly and intelligently waive his right” to this claim.³² Rather, he forfeited his claim when he “fail[ed] to make the timely assertion of [his] right[.]”³³ As such, this claim qualifies for plain-error review under the interests of justice exception to the provision that “[o]nly questions fairly presented to the trial court may be presented for review.”³⁴ Because there is a reasonable probability that, but for the violation of his right to a fair trial, the outcome of Richards’ case would have been different, his convictions must be reversed.

Here, a group of potential jurors was brought into the courtroom. Prior to asking the group *voir dire* questions *en masse*,³⁵ the judge remarked:

Folks, this is a criminal case. And, unfortunately, all of you can't preside as jurors. We have to winnow down our crowd to about 14, 12 to sit and a couple of alternates just in case somebody's tire goes flat or goes down in the heat of battle. We'll see. It's a short case. Probably going to finish tomorrow would be my guess. But we're going to clear you through Wednesday in case there are any speed bumps along the way and we have to continue on until Wednesday. I'm going to read you a bunch of questions, so just let me start with this. Jury service asks something of you as citizens. It asks you to put aside your other work-a-day life and participate in this thing that we're going to do today. And I appreciate fully that that's not something that you take on lightly, and your time is not something that I take lightly. So I see it as part of the job here is to make sure this thing moves efficiently

³¹ *Morales-Garcia*, 2026 WL 278899 *7.

³² *Id.* at *8.

³³ *United States v. Olano*, 507 U.S. 725, 733 (1993).

³⁴ *Delaware Supreme Court Rule* 8.

³⁵ A20.

as possible so we take no more of your time -- and don't interrupt the judge while he's trying to talk. Just kidding. Anyway, so the other thing I'll say is that it's a tremendously noble thing that jurors do. I understand that they don't have time for this. But I also understand that the Constitution would not work if we didn't have citizens willing to step up and serve as jurors and sitting judgment on these cases. We wouldn't have a jury system. And if we didn't have a jury system, no one would trust what happens inside the courthouse. You're there to be the eyes and ears of the community. So if you can serve, I ask you to do so. It's important not just to this case, but it's important to all cases and to our system of justice. However, *we're not hooking you up to lie detector tests on these questions. We're not going to send police out to see if you're telling me the truth. We just want to know if can you serve. And if you can, great. And if you can't, we're not going to flyspeck your answers. What we're looking for, first of all, is do we have about 30 jurors, give or take, that say, yes, I can serve. The questions are designed so that if you have a yes answer, that means, Judge, there's a problem here. And if you don't have a yes answer, that means your answers are all negative; that means I'm good to go, Judge; if I'm selected, I can serve. Okay? So listen to the questions; listen for yes answers. If you have yes answers, the bailiffs will talk to you afterwards about whether or not you can stay or go or what we'll do with the yes answers. And the no answers are the folks who are saying, I can serve if I'm selected. Okay? So here we go.*³⁶

The judge read the *voir dire* questions to the group then stated,

If your answers to any of the above questions are yes or you cannot serve through Wednesday, please follow the directions of court security. And once we get the yeses and noes separated, we'll move on to the next step. So, generally, you're not supposed to talk while I'm here. *So I'm going to skedaddle so you can talk. And we'll get the bodies moved around in the right places. And we'll commence jury selection when I come back. Thank you.*³⁷

³⁶ A26-28.

³⁷ A20, 28-A31.

The judge never asked the potential jurors to place on the record whether they had a “yes” response or “no” response to any of the questions. It appears that it was after the judge skedaddled from the courtroom that the bailiffs identified and sorted through the responses. This process is not on the record. When the judge returned, he addressed the remaining potential jurors, presumably the ones the bailiffs had identified as having “no” responses, as follows: “Okay folks. We can work with you.” The peremptory challenge portion of jury selection was then conducted.³⁸

The judge’s comments impeded the truth-finding function of voir dire.

The phrase “*voir dire*” literally means “to speak the truth.”³⁹ “Venirepersons have a duty to answer all questions fully, fairly, and truthfully during *voir dire*.”⁴⁰ *Voir dire* examination is only effective in selecting an impartial jury if each of the potential jurors answers questions candidly.⁴¹ The right to trial by an impartial jury “can be compromised when a juror fails to disclose material information” during *voir dire*.⁴² This Court has “observed

³⁸ A31-34.

³⁹ *Schwan*, 65 A.3d at 588 (quoting *Black’s Law Dictionary* 1710 (9th ed. 2009)).

⁴⁰ *Banther*, 783 A.2d at 1290.

⁴¹ *Azucena v. State*, 448 P.3d 534,538 (Nev. 2019).

⁴² *Banther*, 783 A.2d at 1290.

that the impartial administration of justice is severely compromised when the juror's nondisclosure of material information during *voir dire* is deliberate.”⁴³

It is true that the judge told potential jurors that jury service is “a tremendously noble thing” and “that the Constitution would not work if we didn't have citizens willing to step up and serve as jurors and sit in judgment on these cases.” He also stated, “if you can serve, I ask you to do so.”⁴⁴ However, he also indicated that the purpose of asking the *voir dire* questions was to “winnow down our crowd to about 14, 12 to sit and a couple of alternates just in case somebody's tire goes flat or goes down in the heat of battle[.]” And, finally, “[w]hat we're looking for, first of all, is do we have about 30 jurors, give or take, that *say*, yes, I can serve.”⁴⁵

It was in that context that the judge also told the jury: “we're not hooking you up to lie detector tests on these questions. We're not going to send police out to see if you're telling me the truth.” Ordinarily, one might chalk these statements up to hyperbole. However, the judge did not stop there. He went on to say that the court was “not going to flyspeck your answers.”⁴⁶ While “flyspeck” is not typically used as a verb, when it is used in that fashion,

⁴³ *Id.* at 1291 (citing *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977)).

⁴⁴ A26-27.

⁴⁵ A26, 28.

⁴⁶ A28.

it means “to examine closely or in minute detail; scrutinize.”⁴⁷ So, the judge telegraphed to the jury that they would not be subjected to the same rigors as typically employed, i.e., individual *voir dire*. In fact, the sole purpose of individual *voir dire* is to scrutinize responses to general *voir dire* questions.

The judge also informed the potential jurors that they would not be required to provide their answers to the judge, thus communicating that there was an even lower level of accountability for providing truthful answers.

If you have yes answers, the bailiffs will talk to you afterwards about whether or not you can stay or go or what we'll do with the yes answers. And the no answers are the folks who are saying, I can serve if I'm selected. Okay?⁴⁸

Here, the judge's pre-*voir dire* comments, even if inadvertent, communicated to potential jurors that the purpose of the questions was= to “winnow” down the numbers and not to select fair and impartial jurors. This necessarily compromised Richards' right to an impartial jury as it created an exponentially high likelihood that a biased juror ended up on his jury.

⁴⁷ A29. <https://www.ahdictionary.com/word/search.html?q=flyspeck>. (last visited 7/23/26).

⁴⁸ 7/14 9. *See Azucena*, 448 P.3d 534 (finding judge committed misconduct by impeding truth-finding function of *voir dire* when he accused prospective juror of fabricating excuse to get out of jury service, threw book at wall, and berated prospective juror for stating that she could not be fair and impartial); *Drake v. State*, 465 S.W.3d 759 (Tex.App. 14th.Dist. 2015) (reversing due to judge's comments and interfering with truth-finding function of *voir dire* by arresting juror who was truthful).

The judge abandoned his duty to make credibility decisions on juror bias.

The Constitution secures a trial by jury that proceeds “under the direction and superintendence of the court.”⁴⁹ In other words, “the judge is essential to the preservation of th[e] right[]” to a jury trial.⁵⁰ Accordingly, the trial judge must be present during every stage of the trial proceedings. In fact, his presence “is as essential to, and as much a critical part of, the *voir dire* of prospective jurors as it is of any other stage of the trial.”⁵¹ That is because it is his duty to “reach conclusions as to impartiality and credibility by relying on [his] own evaluations of demeanor evidence and of responses to questions.”⁵² The judge must make a definite judicial ruling on the record “on the issue of either cause for removal *per se* or the assessment of the juror’s credibility, if removal for cause is discretionary.”⁵³ The trial court’s exercise of discretion during *voir dire* is “subject to the essential demands of fairness.”⁵⁴

The record reveals that after reading the general *voir dire* questions *en masse*, the judge “skedaddled” from the courtroom without requesting some type of response from the potential jurors. Instead, he left them with the

⁴⁹ *Capital Traction Co. v. Hof.*, 174 U.S. 1, 13-16, 19 (1898).

⁵⁰ *Peri v. State*, 426 So.2d 1021, 1023 n.2 (Fla.Dist.Ct.App. 3d. 1983).

⁵¹ *Id.*

⁵² *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981).

⁵³ *Schwan*, 65 A.3d at 589.

⁵⁴ *Parson v. State*, 275 A.2d 777, 780 (Del. 1971).

bailiffs to identify their responses, split them into a “yes” group and a “no” group, and, as earlier directed by the judge, talk to those with the “yes” answers “about whether or not [they] can stay or go or what we'll do with the yes answers.”⁵⁵ Because the bailiffs made the actual decision to excuse those who told them “yes,” the judge was not present to make even a minimal credibility determination. When he returned, the judge relied on the bailiffs’ removals made outside his presence when he began the peremptory phase.

This was not an administrative stage of jury selection;⁵⁶ this was the first stage of *voir dire*. Excusal in response to *voir dire* questions as a result of a potential juror’s inability to serve on Richards’ individual case was excusal for cause, either *per se* or discretionary.⁵⁷ This must be conducted by the judge.⁵⁸ Accordingly, by absenting himself prior to receiving the responses from the potential jurors and allowing the bailiffs to take the responses and make decisions to excuse individuals based on those responses,

⁵⁵ A28.

⁵⁶ See *State v. Wilson*, 298 P.3d 148 (Wash.App. 2013) (distinguishing between pre-*voir dire* administrative excusals and excusals in defendant’s case based on individual evaluations and dismissals “for cause”).

⁵⁷ *Contra State v. Mitchell*, 2026 WL 314309 (Del. Super. Feb. 6, 2026) (finding potential jurors with “yes” answers to general *voir dire* were not struck for cause because, unlike in our case, they were placed in a second pool and remained available until the jury was selected from “no” answers).

⁵⁸ See *Gomez v. United States*, 490 U.S. 858 (1989) (holding that even where federal statute allows delegation of jury selection in felony trial to magistrate, defendant in a criminal trial must agree).

the judge improperly relinquished his duty to evaluate the potential jurors' "demeanor and credibility, a crucial element in the determination of impartiality[.]"⁵⁹ "In sum, the presence of the judge is as essential to, and as much a critical part of, the voir dire of prospective jurors as it is of any other stage of the trial."⁶⁰

The judge's absence in our case "must be viewed as so detrimental to the integrity and reputation of the judicial process as to constitute plain error and require reversal for a new trial."⁶¹ It compounded the negative impact on the integrity of the trial process created by the trial judge's pre-*voir dire* comments. And, as a necessary consequence, it also negatively impacted "public confidence in judicial proceedings[.]"⁶²

Not only does abandoning the duty of excusing jurors for cause a violation of Richards' rights to a fair trial with an impartial jury, but it violates Superior Court Rule of Criminal Procedure 24 ("Rule 24"), which provides,

[t]he court shall itself conduct the examination of prospective jurors. The court shall permit the defendant or the defendant's attorney and the attorney general to supplement the examination

⁵⁹ *Knox v. State*, 29 A.3d 217, 224 (Del. 2011). See *Schwan*, 65 A.3d at 589

⁶⁰ *Peri*, 426 So.2d at 1025 (cataloguing the "manifold" responsibilities involved in a judge's role in *voir dire*).

⁶¹ *People v. Vargas*, 673 N.E.2d 1037, 1042–43 (Ill. 1996) ("trial judge's total absence from a portion of the proceedings during defendant's murder trial must be viewed as so detrimental to the integrity and reputation of the judicial process as to constitute plain error and require reversal for a new trial").

⁶² *Id.* at 1045.

by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

The rule does not permit the court to delegate any questioning to any member of the court staff during *voir dire*, including bailiffs. Part of an examination is the response by the potential juror and the judge's assessment of that response. Here, the judge instructed the bailiffs to talk to those with the "yes" answers "about whether or not [they] can stay or go or what we'll do with the yes answers[.]" Under Rule 24, any delegation of these core judicial functions is nothing less than an abdication.

This Court has made clear in the context of *voir dire*:

All are duty-bound to be on guard against any impropriety which might undermine confidence in our system of justice. Foremost in the performance of that duty are the Trial Judges; and this case is another example of the need for continued vigilance.⁶³

Richards' right to a fair trial by an impartial jury was violated. But for this violation, the outcome of Richards' case would have been different. Thus, his convictions must be reversed.

⁶³ *Jackson*, 374 A.2d at 3.

II. NO RATIONAL TRIER OF FACT COULD FIND RICHARDS GUILTY BEYOND A REASONABLE DOUBT OF RECEIVING A STOLEN FIREARM AS THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE THAT HE KNEW OR BELIEVED THAT THE FIREARM HAD BEEN ACQUIRED UNDER CIRCUMSTANCES AMOUNTING TO THEFT.

Question Presented

Whether any rational trier of fact could find Richards guilty beyond a reasonable doubt of Receiving a Stolen Firearm when the State relied solely on his denial of possessing the stolen firearm seized in the master bedroom coupled with his admission of the possession of the cocaine seized in the master bathroom as evidence that he knew or believed that the firearm had been acquired under circumstances amounting to theft.⁶⁴

Standard And Scope Of Review

This Court reviews a claim of insufficiency of the evidence *de novo* to determine whether, after viewing the evidence in the light most favorable to the State, “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.”⁶⁵

⁶⁴ A302.

⁶⁵ *Stevenson v. State*, 181 A.3d 631 (Del. 2018).

Argument

The State charged Richards in Count III of the re-indictment with Receiving a Stolen Firearm (“RSF”). Pursuant to 11 *Del. C.* § 1450,

[a] person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired.

[...]

Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

RSF was litigated in the “A Trial” with the three drug offenses and the offense of Possession of a Firearm During the Commission of a Felony (dealing cocaine). In other words, RSF was one of the offenses that the court severed from the two “person prohibited” offenses to prevent the jury from “misus[ing] evidence of the cause of his prohibition under §1448 [and] creating an unreasonable risk to unfair prejudice.”⁶⁶

The State’s evidence of Richards’ possession of the seized firearm.

The State claimed Richards constructively possessed the firearm found inside a dresser drawer in the master bedroom where he slept. According to police, a wallet was found in the master bedroom outside the bathroom. It

⁶⁶ A5, 15.

contained Richards' driver's license, a credit card with his name on it, and 32 buprenorphine strips.⁶⁷ Police testified that they also found mail addressed to Richards on the nightstand next to the bed.⁶⁸ Also in the master bedroom was a man's shirt that appeared to police to be Richards' size.⁶⁹

Police located a dresser in the master bedroom. On top, they found a man's gold watch. Inside the top drawer, they found a firearm. It was a black Glock 17 semiautomatic handgun loaded with a magazine containing fifteen .9 mm rounds and one round in the chamber.⁷⁰ According to police, the drawer also contained male clothing, a baseball hat, and a prescription bottle containing four buprenorphine pills.⁷¹ The bottle did not have Richards' name on it. And, police never discovered a prescription in his name for the pills.

The State's evidence the seized firearm was stolen.

To prove that the firearm seized from the dresser was stolen, Detective Macauley testified that he conducted a law enforcement database inquiry on the serial number for that firearm. He claimed that from the inquiry, he learned that the firearm was reported stolen to the New Castle County Police

⁶⁷ A69-70, 74.

⁶⁸ A71.

⁶⁹ A71-72.

⁷⁰ A54, 103.

⁷¹ A75-77, 98.

Department in March 2024, four months before the weapon was seized.⁷²

While the State presented sufficient evidence that the gun was stolen, it provided no evidence as to who reported the theft, who actually owned the firearm, or how it was stolen.

The State failed to establish Richards knew or believed the seized firearm was acquired under circumstances amounting to theft.

According to police, Richards was cooperative when they arrived at his home to conduct the search for drugs and spoke with him “regarding anything that might be located there.”⁷³ In fact, he told police exactly where they would find cocaine.⁷⁴ Police also asked Richards whether there were any firearms in the residence; he responded that there were none “that he’s aware of.”⁷⁵

Police claimed that after they found the firearm, Richards did not offer what they considered a “definitive explanation” of how the gun got in the dresser. At first he suggested that his son, who was incarcerated at the time, must have left it there. Later, he suggested that while the SWAT team was at the door, one of the male juveniles from the third floor may have run down

⁷² A85-86.

⁷³ A64, 87.

⁷⁴ A64, 87.

⁷⁵ A64-65.

and potentially put the firearm into the dresser.⁷⁶ Richards never admitted to possessing the firearm.⁷⁷ Nor was he seen in actual possession of the firearm.

The State presented no evidence to undercut Richards' hypotheses of how the firearm got in the dresser. Yet, in closing, the State argued:

Isn't it a bit odd that he would admit to the drugs and not the gun? Watch his admission at the house on the body cam. The first thing he admits to is the cocaine, which is the illegal item farthest away from the gun. He's trying to lead police away so that they don't find the gun. Because he knows it's stolen and he knows what's going to happen if they find it. The circumstances show that he knew the gun was stolen.⁷⁸

The record in this case is bereft of any evidence from which any reasonable trier of fact could conclude that Richards “knew or believed the firearm was acquired under circumstances amounting to theft.” There was no evidence of actual possession. The State sought conviction of the gun possession offenses via the theory of constructive possession. Richards’ DNA was not found on the firearm. There was no evidence as to the circumstances of the theft of the firearm that occurred several months earlier. There was no evidence in the record “bearing on the defendant’s receipt of” the firearm.⁷⁹

⁷⁸ A211.

⁷⁹ *Whatley v. State*, 490 So.2d 1220, 1224 (Miss. 1986) (finding insufficient evidence of guilty knowledge left the State with establishing only possession

In other words, nothing was presented as to how, when, or from whom he obtained the firearm.⁸⁰ Further, the fact that the officer was able to look up the firearm's serial number shows that the number was not rubbed off the weapon, which, had it been, would have been an indicator that the weapon was stolen.⁸¹ Finally, the firearm placed in a top dresser drawer of the master bedroom in his home where there is a young child. This is a distinction from one who disposes, throws away, or tosses a gun because he may be aware the gun was stolen.⁸²

The only evidence with respect to how the gun ended up where it did was Richards' denial of possession and suggestions as to how it may have ended up there. While police testified that he provided no "definitive" explanation for how the gun got in the dresser, they never provided any

of stolen property which is insufficient for proof of receiving stolen property).

⁸⁰ *Barton v. State*, 303 So.3d 698, 703 (Miss. 2020) (noting the "dearth of evidence explaining how [the defendant] came to possess the firearm in question"); *State v. Black*, 683 S.E.2d 790 (N.C. App. 2009) ("Without more, the State's evidence that Defendant backed away from the officer during the frisk did no more than raise a suspicion that Defendant may have known or had reason to know that the revolver was stolen.").

⁸¹ *See State v. Nivens*, 861 S.E.2d 929 (N.C.App. 2021) (noting that scratching off of a serial number can be evidence of stolen firearm).

⁸² *See State v. Wilson*, 691 S.E.2d 734 (N.C. App. 2010) (distinguishing inference of guilty knowledge that can be made from removing a firearm from a coat and throwing it into the bushes and the lack of incrimination by placing a firearm in one's own property).

evidence to establish that this less than “definitive” explanation amounts to guilty knowledge of the stolen character of the firearm.⁸³ None of the officers testified that they believed that Richards’ admission to the cocaine was made “to lead police away so that they don’t find the gun.” The only characterization of Richards’ response to police that was introduced at trial was that he was cooperative and that his hypotheses about how the gun got in the dresser were not definitive.⁸⁴

Without more, the State’s evidence that Richards denied knowledge of the gun failed to point to any knowledge or belief that the firearm was acquired under circumstances amounting to theft.⁸⁵ Because the State failed to present sufficient evidence from which any reasonable trier of fact could conclude beyond reasonable doubt that Richards “knew or believed the firearm was acquired under circumstances amounting to theft,” the trial court should have

⁸³ *McMurray v. State*, 844 S.E.2d 303 (Ga.App. 2020) (holding evidence insufficient when defendant responded, when asked if he knew gun was stolen, “No-well, I don’t know, man. I just bought it from some guy and I don’t know his name”); *State v. Weakley*, 627 S.E.2d 315 (N.C.App. 2006) (holding evidence insufficient when defendant testified he took firearms as collateral for a loan without knowing they were stolen).

⁸⁴ A86-87.

⁸⁵ *McMurray*, 844 S.E.2d 303 (holding evidence insufficient to show defendant knew firearm was stolen when firearm found in his hotel room, and owner reported gun missing two months earlier).

entered a judgement of acquittal on his charge of RSF and this Court must now vacate his conviction.

Prior to the verdict in the “A Trial,” the judge inquired whether there would be a need for the “B Trial” if Richards was acquitted of Possession of a Firearm During the Commission of a Felony. In response, defense counsel explained that it would be if he were convicted of RSF. He noted that if he was not guilty of RSF, “it does pretty much remove the need for the person prohibited B trial.” The prosecutor did not object to this statement. Thus, this Court must also vacate the two “person prohibited” convictions.⁸⁶

⁸⁶ A264-265.

III. THE PROSECUTOR VIOLATED RICHARDS’ DUE PROCESS RIGHTS UNDER THE STATE AND FEDERAL CONSTITUTIONS WHEN HE MISREPRESENTED EVIDENCE AND WHEN HE DENIED RICHARDS A FULL AND FAIR OPPORTUNITY TO DEFEND AGAINST THE STATE’S CHARGE OF RECEIVING A STOLEN FIREARM.

Question Presented

Whether the State violated Richards’ due process rights under the state and federal constitutions when, during closing argument, the prosecutor misrepresented a fact to mislead the jury to make an improper inference and when he failed to disclose his intent to argue that Richards’ denial of possession of the firearm coupled with his admission of possession of cocaine reflected his knowledge of the stolen nature of the seized firearm even though the prosecutor was aware that information material to that argument had been withheld from the jury.⁸⁷

Standard And Scope Of Review

Issues of prosecutorial misconduct that are not raised below are reviewed for plain error. Here, this Court must determine whether: “(a) the trial record is adequate; (b) the claim[] w[as] forfeited or waived; (c) the claimed misconduct violates current law; and (d) there is a reasonable probability that, but for the misconduct, the outcome would have been

⁸⁷ See Delaware Supreme Court Rule 8.

different.”⁸⁸ Even when there is no plain error, this Court may still reverse when the misconduct is repetitive.⁸⁹

Argument

In our case, the prosecutor engaged in misconduct through improper comments and by failing to disclose his intent to argue that Richards’ denial of possession of the firearm along with his admission of possession of cocaine amounted to knowledge of the stolen nature of the seized firearm. During closing argument, the prosecutor misrepresented evidence to mislead the jury into drawing an inference not supported by the record - that Richards intentionally directed police as far away from the gun as he could because he knew the gun was stolen. In urging this inference, the prosecutor took advantage of the fact that the jury was not aware of Richards’ prohibited status, information material to the argument. He also provided Richards with no indication that he intended to make this argument. This deprived Richards of the opportunity to make any adjustments to trial strategy with respect to stipulations, defenses, or applications to the court. But for the misconduct, the outcome of Richards’ case would have been different; his RSF and person prohibited convictions must be reversed.

⁸⁸ *Morales-Garcia v. State*, 2026 WL 278899 *7 (Del. Feb. 3, 2026). See *Suber v. State*, 2026 WL 184867 *5-6 (Del. Jan 15, 2026).

⁸⁹ *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).

The record is adequate for this Court to conclude there was prosecutorial misconduct. All facts relevant to the misconduct are in the trial transcript. Thus, “the State was not disadvantaged by the lack of record.”⁹⁰ Richards did not object to the misconduct, but he did not “knowingly and intelligently waive his right” to that claim.⁹¹ At worst, given the prosecutor engaged in a strategy of surprise, Richards forfeited his claim.⁹² As such, the prosecutorial misconduct in this case qualifies for plain-error review under the interests of justice exception to the provision that “[o]nly questions fairly presented to the trial court may be presented for review.”⁹³

The prosecutor misrepresented evidence to mislead the jury.

In closing, the State argued:

Isn't it a bit odd that he would admit to the drugs and not the gun? Watch his admission at the house on the body cam. The first thing he admits to is the cocaine, which is the illegal item farthest away from the gun. He's trying to lead police away so that they don't find the gun. Because he knows it's stolen and he knows what's going to happen if they find it. The circumstances show that he knew the gun was stolen.⁹⁴

⁹⁰ *Morales-Garcia*, 2026 WL 278899 *7.

⁹¹ *See Suber*, 2026 WL 184867*5; *Morales-Garcia*, 2026 WL 278899 *8.

⁹² *United States v. Olano*, 507 U.S. 725, 733 (1993).

⁹³ *Delaware Supreme Court Rule 8*; *Suber*, 2026 WL 184867*4.

⁹⁴ A211.

The prosecutor engaged in misconduct when he misrepresented evidence in order to “misle[a]d the jury as to the inferences it may draw.”⁹⁵ His statement that the cocaine was “the illegal item farthest away from the gun,” while technically true, was not the item (drug) he illegally possessed farthest away from the gun. Police found Richards in illegal possession of a bag of fentanyl that was located on a completely different floor of the house.⁹⁶

A statement may be “technically accurate” or “factually correct” but still misleading “based on the natural and reasonable inferences it invites.”⁹⁷ The prosecutor’s words were carefully crafted to mislead the jury to infer a fact that was not in the record. In fact, this entire argument was made out of whole cloth. None of the officers testified that they believed that Richards’ admission to the cocaine was made “to lead police away so that they don’t find the gun.” The only characterization of Richards’ response to police that was introduced at trial was that he was cooperative and that his hypotheses about how the gun got in the dresser were not definitive.⁹⁸

This impermissible inference, which rested on the misrepresentation, was the “foundation” of the prosecutor’s further impermissible inferences that

⁹⁵ *Daniels v. State*, 859 A.2d 1008, 1011 (Del. 2004) (citation and internal quotation marks omitted).

⁹⁶ A54, 68-70, 74-80, 89, 98, 103.

⁹⁷ *Jenkins v. Artuz*, 294 F.3d 284, 294 (2d Cir. 2002).

⁹⁸ A86-87.

Richards “knows it's stolen and he knows what's going to happen if they find it[,]” and that “[t]he circumstances show that he knew the gun was stolen[.]”⁹⁹ There certainly was no other evidence supporting the prosecutor’s *ipse dixit* that Richards knew the gun was stolen. The State presented no evidence of how the firearm ended up in the dresser, countering Richards’ hypotheses, or of the circumstances under which Richards allegedly obtained the firearm.

The prosecutor denied Richards a full and fair opportunity to defend against the charge of receiving a stolen firearm.

Assuming, *arguendo*, a reasonable inference could be made from the actual evidence in the record that Richards knew or believed the firearm was acquired under circumstances amounting to theft, the prosecutor’s argument was still improper as it violated Richards’ due process rights under the state and federal constitutions “to a full, fair, potentially effective opportunity to defend against the State’s charge[.]”¹⁰⁰ of RSF.

Prior to trial, the judge severed the two “person prohibited” offenses from the remaining charges in order to prevent the jury from misusing evidence of the cause of his prohibition and unreasonable risk to unfair prejudice. Accordingly, the prosecutor knew the evidence of Richards’ status as a person prohibited would be “withheld” from the jury during its

⁹⁹ *Whittle v. State*, 77 A.3d 239, 248 (Del. 2013).

¹⁰⁰ *Gray v. Netherland*, 518 U.S. 152, 172 (1996) (Ginsburg, J. dissenting).

assessment of the RSF charge. In fact, the State did not object to the severance of the offenses due to the prejudicial nature of Richards' prohibited status.

At no time prior to the State's closing argument did the prosecutor inform defense counsel that he intended to argue that Richards' "guilty knowledge" for the purpose of RSF is evidenced by his responses to the detective's questions. He did not hint at that argument in his opening statement. There was no testimony or opinion evidence presented at trial revealing the nature of the argument. Further, there is no Delaware case law holding that a defendant's statement denying awareness of the presence of a firearm in one's home is evidence of knowledge of its stolen nature.

This Court has "not stated an all-inclusive definition of prosecutorial misconduct."¹⁰¹ However, "[t]hrough the years, [it] has cautioned prosecutors, in light of their obligation 'to seek justice within the bounds of the law, not merely to convict,' to take care when addressing juries, lest their argument be misleading, inflammatory, and prejudicial."¹⁰² The tactics used by the prosecutor in this case were unfairly prejudicial and not consistent with a prosecutor's duty to seek justice.

Common sense dictates that if Richards did possess the firearm, he

¹⁰¹ See *Bunting v. State*, 2006 WL 2587074, at *3 (Del. Sep. 7, 2006).

¹⁰² *Watson v. State*, 303 A.3d 37, 50 (Del. 2023)

would have another very compelling reason why he would not want police to find it – he is a person prohibited. If found with the firearm, stolen or not, he faced a minimum mandatory sentence of 10 years in prison rather than the penalties for the simple drug possession charges of which he was later convicted. So, the prosecutor knew that Richards’ prohibited status was material to his argument. He knew that the material information was kept from the jury by order of the court because it would have been unfairly prejudicial to the litigation of the non “person prohibited” offenses.

A prosecutor’s duty of candor requires that he “guard against inviting inferences of fact arguably contrary to evidence which they are aware but which is not of record in a case.”¹⁰³ Here, the prosecutor was aware that the totality of the evidence, including that being withheld from the jury, would allow for another reasonable inference. Yet, he argued that the only reasonable inference as to why Richards tried to “lead police away from the gun” was “[b]ecause he knows it's stolen[.]”

Richards reasonably relied on the fact that his prohibited status was not “material” in the A trial, as the State did not object to his motion to sever the “person prohibited” offenses. The State’s opening and presentation of evidence gave no cause to dissuade him from this reliance. Thus, the

¹⁰³ *Powell v. United States*, 880 A.2d 248, 258 n. 23 (D.C. 2005).

prosecutor ambushed Richards in closing with an argument to which his prohibited status was material but was not in evidence.¹⁰⁴ The State's failure to notify Richards of this argument prevented him from making any adjustments to trial strategy with respect to stipulations, defenses, or applications to the court.

The prosecutorial misconduct is reversible error.

The prosecutor's improper and misleading argument went directly to a key element of the offense of RSF. The State sought to establish whether Richards knew or believed the firearm was acquired under circumstances amounting to theft through circumstantial evidence. In fact, the case was based solely on the misrepresented fact and an argument to which Richards was denied a full, fair, and potentially effective opportunity to defend against. The jury's verdict on the RSF charge rested entirely on the prosecutor's argument. Thus, there is a reasonable probability that the outcome of Richards

¹⁰⁴*See Woodard v. United States*, 56 A.3d 125, 127-128 (D.C. 2012) (reversing because prosecutor's misleading, although technically correct, statement that witness identified no one face-to-face at first trial created strong suggestion that witness had been afraid "to face the person [he would be] identifying" and thus "held back" information could readily be taken to mean that witness had identified no one who was in court on that occasion contrary to the prosecutor's knowledge but not the jury's).

trial would have been different if the misconduct had not occurred.¹⁰⁵

Accordingly, this Court must reverse his RSF conviction.

Additionally, because the State did not contest defense counsel's representation to the court that there would be no need for the "B Trial" if Richards was acquitted of RSF along with Possession of a Firearm During the Commission of a Felony, this Court must also vacate his two "person prohibited" convictions.¹⁰⁶

¹⁰⁵ *Darden v. Wainwright*, 477 U.S. 168 (1986).

¹⁰⁶ A264-265.

CONCLUSION

For the reasons and upon the authorities cited herein, Richards' convictions must be vacated.

Respectfully submitted,

/s/ Nicole M. Walker

Nicole M. Walker [#4012]

/s/ Anthony Capone

ANTHONY CAPONE [#5315]

Carvel State Building

820 North French Street

Wilmington, DE 19801

DATED: August 19, 2026