



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 REPLY BRIEF

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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.

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

The State inaccurately claims that Richards offers no explanation for his argument that the judge's comments to potential jurors "necessarily compromised Richards' right to an impartial jury as it created an exponentially high likelihood that a biased juror ended up on his jury."¹ In fact, Richards thoroughly analyzed the judge's statements and clarified how his comments - suggesting both that jurors need not worry about their responses² being scrutinized for credibility, and that they would not be giving their responses directly to the judge - are inconsistent with the purpose and typical process of *voir dire*. Richards emphasized that *voir dire* aims to select jurors capable of delivering an impartial verdict based solely on the evidence and the law.³ Therefore, by undermining the *voir dire* process, the judge "necessarily compromised Richards' right to an impartial jury as it created an

¹ State's Ans. Br. at p. 14.

² The responses were to questions probing the issue of bias. A28-31.

³ *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985).

exponentially high likelihood that a biased juror ended up on his jury.” This is straightforward.

The State, on the other hand, claims that “[r]ead fairly, the judge’s comments advised potential jurors that they were being asked to perform a civic duty, but were not under inquisition.”⁴ It contends, “the trial judge’s comments were designed to put potential jurors at ease, not to invite them to make false statements.”⁵ There is no doubt that the judge advised the potential jurors that they were being invited to perform a civic duty. And Richards does not claim that the judge intended to invite them to make false statements. But in his attempt to put them “at ease,” the judge did not describe an inquisition they would not face; instead, he explained they would not undergo the same rigors typically (though not always) used in *voir dire*. In fact, the sole purpose of individual *voir dire* is to scrutinize responses to general *voir dire* questions.

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

Significantly, the State ignores the merits of Richards’ argument and its core legal basis that his constitutional right to a trial by jury that proceeds “under the direction and superintendence of the court[.]”⁶ was violated. The State does not dispute that it is the trial judge’s constitutional duty to “reach

⁴ State’s Ans. Br at p. 14.

⁵ State’s Ans. Br at p. 14.

⁶ *Capital Traction Co. v. Hof.*, 174 U.S. 1, 13-16, 19 (1898).

conclusions as to impartiality and credibility [of potential jurors] by relying on [his] own evaluations of demeanor evidence and of responses to questions.”⁷ The State does not dispute that the judge “skedaddled” from the courtroom without taking any responses from potential jurors to the *voir dire* questions. The State does not dispute that the judge delegated to the bailiffs the duty of taking the *voir dire* responses. The State does not dispute that when the trial judge abandoned his duty to excuse jurors for cause in this case, he violated Richards’ rights to a fair trial with an impartial jury. Instead, the State characterizes this function as merely “ministerial,”⁸ without providing support to counter Richards’ authority holding otherwise.⁹ Accordingly, the State does not contest either the facts or the law that requires a conclusion that the *voir dire* process in this case was unconstitutional.

Along with the State’s silence is the reality of the record and the law that establishes that when the judge absented himself prior to receiving the responses from the potential jurors and allowed the bailiffs to take the responses and make decisions to excuse individuals based on those responses, the judge improperly relinquished his duty to evaluate the potential jurors’

⁷ *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981).

⁸ State’s Ans. Br. at p. 16.

⁹ 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”).

“demeanor and credibility, a crucial element in the determination of impartiality[.]”¹⁰ An off-the-record conversation with a bailiff does not protect the integrity of the jury selection process in the same fashion as an on-the-record examination by the judge. For example, we do not know if a juror may have approached a bailiff while vacillating about a “yes” answer then decided to withdraw it after consultation, leaving their concern about potential bias unexamined by the judge as they returned to the jury pool.

Assuming, *arguendo*, this Court determines the process in this case was constitutional, this Court must still find that it violates Superior Court Rule of Criminal Procedure 24. While the State technically responds to Richards’ argument that delegating to court staff portions of the *voir dire* process violates the rule, it simply describes the process in our case and provides the following one-liner: “This procedure was consistent with the requirements of Rule 24(a) and resulted in a sufficiently large pool of potential unbiased jurors.”¹¹ The State does not explain how the rule permits the court to delegate any questioning to court staff, including bailiffs, during *voir dire*.

¹⁰ *Knox v. State*, 29 A.3d 217, 224 (Del. 2011). See *Schwan v. State*, 65 A.3d 582, 589 (Del. 2013).

¹¹ State’s Ans. Br. at p. 16.

Reversible Error.

Rather than spending much time on the merits, the State focuses on the claim that Richards suffered no prejudice from the judge's actions during *voir dire*. By ignoring the constitutional violation in this case, the State may have hoped to divert this Court's attention from the presumption of prejudice arising from the structural error. The trial judge's absence during a critical part of *voir dire*, without an affirmative waiver by Richards, created a "structural constitutional error so prejudicial that prejudice to the fairness and integrity of [Richards]' trial process [must be] presumed."¹² It also compounded the negative impact on the integrity of the trial process created by the trial judge's pre-*voir dire* comments. Prejudice must also be presumed from the judge's pre-*voir dire* comments.

Assuming, *arguendo*, this Court finds that Richards must show prejudice flowing from either or both the pre-*voir dire* comments and absence of the trial judge from a critical stage in the trial proceedings, it must also conclude that Richards was prejudiced in that he was left with jurors who were not "presumed to answer truthfully in responding to *voir dire* questions."¹³

¹²*Suber v. State*, 360 A.3d 203, 211 (Del. 2026). See *Gomez v. United States*, 490 U.S. 858 (1989) (when judicial authority over felony trial is delegated without the defendant's affirmative waiver, it is structural error).

¹³ State's Ans. Br. at p.14.

While each juror may start with that presumption, the *voir dire* process allows the presumption to continue. The trial judge must assess the credibility of their responses. It is the trial judge's assessment that allows this Court to continue to presume that each juror is impartial. Typically, this Court must defer to the judge because, unlike the trial judge, appellate judges are absent from *voir dire* when the prospective juror is questioned. Here, the trial judge's absence removes any presumption of a juror's fitness, as the judge conducted no assessment of the potential jurors' demeanor and credibility.

Richards' fundamental right to a fair trial by an impartial jury under the Sixth Amendment of the United States Constitution was violated by the judge's pre-*voir dire* comments and his absence from *voir dire*. Either one of those errors or both of the errors combined requires reversal of all Richards' convictions.

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.

The State agrees that it failed to present sufficient evidence from which any reasonable trier of fact could conclude beyond a reasonable doubt that Richards “knew or believed that the firearm was stolen[,]” and that “Richards’ RSF conviction should be vacated.”¹⁴ However, it asks this Court to excuse the prosecutor’s knowing waiver regarding the ramifications of an acquittal of both the Possession of a Firearm During the Commission of a Felony and RSF on the “person prohibited” offenses.¹⁵

The issue regarding the prosecution of the two “person prohibited” offenses in a second trial was not a minor one. Just before the verdict in the A trial, defense counsel and the prosecutor spoke in detail with the judge about the enhanced penalties the State could seek depending on the verdict the jury reached in the A trial. Defense Counsel suggested one possible outcome of the A trial and its impact on the B trial:

Well, even if -- there is another complication because there's a receiving stolen firearm, which is a felony. If he's not guilty as to Count I, as a matter

¹⁴ State’s Ans. Br. at pp. 25-26.

¹⁵ A264-265.

of law, he can't be guilty of Count II. But that still leaves open the receiving stolen firearm felony that would need a verdict. If that comes back as a not guilty, it does pretty much remove the need for the person prohibited B trial.¹⁶

The prosecutor did not dispute that assessment.

The parties continued to discuss potential enhancements as the jury would be required to make factual findings in the B trial pursuant to *Erlinger v. United States*¹⁷ if necessary. The judge stated, “[a]ssuming that we're going to a B case – I don't know whether we are or not -- but if we are, the instructions are quite short, so I'll probably give them at the beginning instead of the end.”¹⁸ Again, the prosecutor did not raise any objection or dispute the fact that there would not be a B trial for the “person prohibited” offenses if Richards was acquitted of both the PFDCF and RSF.

Here, it is clear that defense counsel stated in “the presence and hearing of” the prosecutor that an acquittal on both the PFDCF and RSF would negate the need for a trial on the “person prohibited” offenses. It was the prosecutor’s “duty” to “speak if there was any fault made in the statement, and the failure then and there to so speak acted as an acquiescence in and an assent to the statement, and to an admission of facts contained in the statement binding on

¹⁶ A265.

¹⁷ 602 U.S. 821 (2024).

¹⁸ A267.

the [State].”¹⁹ The prosecutor had plenty of opportunity to respond and, when the judge followed up with the statement seemingly adopting defense counsel’s understanding of the scenario, he had another opportunity to clarify that defense counsel was incorrect, if he believed that to be the case. The State’s current argument, inconsistent with the prosecutor’s conduct, appears to be “an afterthought[.]”²⁰ Accordingly, both “person prohibited” offenses must be vacated.

¹⁹ *Godwin v. State*, 74 A. 1101, 1102 (Del. 1910).

²⁰ *Id.*

CONCLUSION

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

Respectfully submitted,

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