EFiled: Aug 27 2026 04:57PM EDT
Filing ID 80478516
Case Number 119,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TRAMONT MITCHELL,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	No. 119, 2026
v.	)	
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

APPELLANT'S OPENING BRIEF

THE LAW OFFICE OF
BENJAMIN S. GIFFORD IV

BENJAMIN S. GIFFORD IV, ID No. 5983
HALEY Q. LOPEZ, ID No. 7229
14 Ashley Place
Wilmington, DE 19804
(302) 304-8544

Attorneys for Defendant Below - Appellant

DATED: August 27, 2026

TABLE OF CONTENTS

TABLE OF CITATIONS iii

NATURE OF THE PROCEEDINGS 1

SUMMARY OF THE ARGUMENT 11

STATEMENT OF FACTS 13

ARGUMENT 24

I. THE SUPERIOR COURT COMMITTED PLAIN ERROR BY PERMITTING A CRITICAL PROSECUTION WITNESS TO TESTIFY WITH IMMUNITY FROM PROSECUTION FOR PERJURY 24

A. Question Presented 24

B. Standard and Scope of Review 24

C. Merits of Argument 25

II. THE SUPERIOR COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL WHERE JUROR NO. 6'S FAILURE TO DISCLOSE MATERIAL INFORMATION DURING *VOIR DIRE* DEPRIVED APPELLANT OF THE INTELLIGENT EXERCISE OF A PEREMPTORY CHALLENGE 46

A. Question Presented 46

B. Standard and Scope of Review 46

C. Merits of Argument 47

CONCLUSION 55

MEMORANDUM OPINION AND ORDER UPON DEFENDANT TRAMONT MITCHELL'S MOTION FOR NEW TRIAL, CASE NUMBERS 2209011921A&B, February 5, 2026 ..... Exhibit A

SENTENCING ORDER, CASE NUMBER 2209011921A&B, February 13, 2026 ..... Exhibit B

TABLE OF CITATIONS

Cases

Banther v. State, 823 A.2d 467 (Del. 2003) 49, 53
Campbell v. State, 974 A.2d 156 (Del. 2009) 24
Collins v. State, 420 A.2d 170 (1980) 26
Cooke v. State, 97 A.3d 513 (Del. 2014) 48-49
Daniels v. State, 169 F. 459 (6th Cir. 1912) 27
Diaz v. State, 743 A.2d 1166 (Del. 1999) 48
Dorsey v. State, 761 A.2d 807 (Del. 2000) 50
Durham v. State, 2016 WL 499348 (Del. Supr. Feb. 7, 2016) 27
Feagin v. State, 307 So.3d 988 (Fla. Dist. Ct. App. 2020) 52
Flonnory v. State, 778 A.2d 1044 (Del. 2001) 47
Hall v. State, 12 A.3d 1123 (Del. 2010) 48
Hassell v. City of Columbia, 846 S.E.2d 373 (S.C. Ct. App. 2020) 52
Hughes v. State, 490 A.2d 1034 (Del. 1985) 48, 51, 53
Jackson v. State, 374 A.2d 1 (Del. 1977) 47, 49, 51
Jenkins v. State, 305 A.2d 610 (Del. 1973) 41
Kastigar v. State, 406 U.S. 441 (1972) 25-26
Lopez-Vazquez v. State, 956 A.2d 1280 (Del. 2008) 46
McCoy v. State, 112 A.3d 239 (Del. 2015) 53
McDonough Power Equipment Inc. v. Greenwood, 464 U.S. 548 (1984) 48
McRary v. State, 290 A.3d 442 (Del. 2023) 24
Parson v. State, 275 A.2d 777 (Del. 1971) 48-49
Riley v. State, 496 A.2d 997 (Del. 1985) 52
Schwan v. State, 65 A.3d 582 (Del. 2013) 49, 51-52
State v. Mitchell, 2026 WL 314309 (Del. Super. Ct. Jan. 6, 2026) 9
State v. Simmons, 205 A.3d 569 (Conn. App. Ct. 2019) 41-43
Styler v. State, 417 A.2d 948 (Del. 1980) 48
United States v. Freed, 401 U.S. 601 (1971) 26
Wainwright v. State, 504 A.2d 1096 (Del. 1986) 25, 40
Waters v. State, 242 A.3d 778 (Del. 2020) 46
Williamson v. State, 707 A.2d 350 (Del. 1998) 24
Worthy v. State, 120 A.3d 581 (Del. 2015) 35-40, 42-44

Constitutional Provisions

Del. Const. Art. I, § 7 ..... 25, 47
U.S. CONST. amend. V 25
U.S. CONST. amend. VI 47

Rules and Statutes

11 *Del. C.* § 475 26
11 *Del. C.* § 3506 26-27
16 *Del. C.* § 3507 ..... 30-31, 44

NATURE OF THE PROCEEDINGS

Indictment and Arrest

On February 28, 2022, the Grand Jury returned an Indictment against Appellant, Tramont Mitchell, charging him with one count each of Murder in the First Degree, Possession of a Firearm During the Commission of a Felony ("PFDCF"), and Possession of a Firearm by a Person Prohibited ("PFBPP").[1] The same day, the Superior Court issued a Rule 9 warrant for Mr. Mitchell's arrest, which was returned days later on March 2, 2022.[2] Appellant was held in default of bail and remained incarcerated through trial.[3]

Pretrial Activity

Mr. Mitchell, initially represented by the Public Defender's Office, entered a plea of Not Guilty on April 12, 2022.[4] On July 26, 2022, the Public Defender's Office alerted the trial court that it had a conflict of interest and could not represent

[1] A0001; A0033-34.

[2] A0001.

[3] A0001.

[4] A0001.

Appellant.[5] The Office of Conflict Counsel appointed undersigned counsel's office to represent Appellant moving forward.[6]

Mr. Mitchell appeared for Final Case Review on March 4, 2024, during which he rejected a plea offer extended by the State after engaging in a colloquy with the Court.[7] Additionally, Mr. Mitchell moved to sever the PFBPP charge, which was granted by the Superior Court.[8] Accordingly, the trial judge split the matter into A- and B-cases, with the PFBPP charge to be tried separately in the B-case after conclusion of the A-case.[9]

Jury Selection

During Appellant's Final Case Review, the trial judge advised the parties that because Mr. Mitchell's matter was one of "two big trials" scheduled for jury selection on the same date, a limited number of potential jurors existed.[10] The Court asked whether, if a sufficient number of potential jurors answered no to

---

[5] A0002-03.

[6] *See generally* A0004.

[7] A0005; A0053-65.

[8] A0061-62.

[9] A0062.

[10] A0063.

every question posed during *voir dire*, the parties objected to proceeding forward with that limited pool of jurors, negating the need to individually speak with any prospective juror.[11] Both parties acquiesced to the Court's suggested course of action.[12]

Jury selection occurred on March 7, 2024.[13] Twenty-eight questions were posed to the panel, including the following, Question Number 17 (hereinafter "Q17"): "Have you, any member of your immediate family, or a close personal friend, ever been accused of, a victim of, or a witness to a criminal offense—other than an ordinary traffic violation?"[14] After hearing all the questions, there remained a sufficient number of potential jurors for the Court to excuse anyone who answered affirmatively to any of the *voir dire* questions.[15] The selection process proceeded as normal with the remaining candidates and a jury was soon empaneled.[16]

---

[11] A0063.

[12] A0063.

[13] A0006; A0075-138.

[14] A0073; A0092.

[15] A0095-99.

[16] A0099-134.

Trial

Trial began on March 11, 2024 and ended on March 19.[17] During trial, the parties informed the Court of a potential issue related to the impending testimony of Raneesha Matthews, Mr. Mitchell's paramour.[18] In explaining the issue to the Court, the defense advised the State would "try to establish that she did lie during the investigation, or that she is lying now."[19] The parties agreed that through her testimony, Raneesha was likely to expose herself to potential charges of Hindering Prosecution or Perjury.[20] The State intended to consult with the appellate division of the Department of Justice before proceeding.[21] The defense alerted the Office of Conflict Counsel that Raneesha would likely need a lawyer appointed to represent her prior to her testifying.[22] Molly R. Dugan, Esquire, was appointed by OCC to represent Raneesha.[23]

---

[17] A0006-07; A0252-1320.

[18] A0558-59. Appellant will refer to Ms. Matthews by her first name throughout the rest of the Opening Brief as her mother, Mignon Matthews, also testified at trial; she will similarly be referred to as "Mignon" to avoid confusion.

[19] A0559.

[20] A0559.

[21] A0559-60.

[22] A0560.

[23] A0567. *See also* A0660.

Prior to calling Raneesha to testify, the State advised the trial court that it would be submitting "something on immunity" for her testimony.[24] The Immunity Agreement (hereinafter "the Agreement") was admitted as a Court Exhibit soon thereafter.[25] The Agreement provided:

> Raneesha Matthews will testify on March 12, 2024 in the case of State v. Tramont Mitchell; #2202011921.
>
> The State acknowledges that it will not use the testimony she will provide as evidence against her in criminal prosecutions for the crimes she testified about and admitted liability for.
>
> The State will not use the testimony of Raneesha Matthews to prosecute her for any criminal activity that was included in her testimony.[26]

The Agreement was signed by the State, Ms. Dugan, and Raneesha herself.[27] After its admission as a Court Exhibit, Raneesha offered her immunized testimony to the jury.[28]

On March 17, 2024, the jury returned a verdict of guilty as to Murder in the First Degree and PFDCF.[29] Mr. Mitchell elected to waive his right to a jury trial in

---

[24] A0593.

[25] A0595; A0660.

[26] A0660.

[27] A0660.

[28] A616-58.

[29] A1317.

the B-case, and proceeded to a bench trial as to the PFBPP charge.[30] After a brief trial, the Superior Court found Mr. Mitchell guilty of PFBPP.[31] The trial judge deferred sentencing upon completion of a presentence investigation.[32]

Motion for New Trial

Appellant's Sentence Hearing was scheduled for July 19, 2024.[33] Days before, the defense informed the trial court that it had "recently learned that one of the members of the jury that convicted Mr. Mitchell may have provided a false answer in response to one of the questions posed by the Court during the jury selection process."[34] Appellant requested that sentencing be continued to allow the defense to fully research the issue and, if appropriate, file a Motion for New Trial.[35]

The Court scheduled an Office Conference for July 18, 2024 to discuss the matter.[36] The defense explained that upon investigation, it appeared as though

---

[30] A1317-18.

[31] A1318-19.

[32] A1319.

[33] *See* A0008-09; A1321.

[34] A0005; A1321.

[35] A1321.

[36] A005; A1323-34.

Juror No. 6 failed to disclose two prior arrests in response to Q17.[37] Further, the defense stated it needed time to research the issue to determine whether it formed a valid basis for a motion for new trial.[38]

Appellant filed a Motion for New Trial on July 30, 2024.[39] The State filed a Response on August 12, 2024.[40] On August 23, 2024, Mr. Mitchell requested that the trial court convene a hearing during which Juror No. 6 could be questioned about her inaccurate response during *voir dire* as to Q17.[41] The Court agreed such a hearing was appropriate and detailed the process it would take to secure the juror's presence.[42]

That hearing occurred on November 1, 2024.[43] The Court questioned Juror No. 6 about her prior arrests and why she answered Q17 in the negative.[44] The

---

[37] A1324-26.

[38] A1326.

[39] A0009; A1338-60.

[40] A0010; A1361-85.

[41] A1386.

[42] A1391-95.

[43] A0010; A1408-34.

[44] A1413-23.

Juror initially maintained that she had accurately answered Q17 and denied that either arrest identified by the Court was hers.[45] Upon further questioning, however, she acknowledged both arrests.[46] Juror No. 6 testified that the incidents had not come to mind during *voir dire* because of the passage of time, denied that she intended to deceive the Court, and stated that neither incident would have affected her ability to serve impartially.[47] At the conclusion of the hearing, the Superior Court advised Juror No. 6 that, because Q17 contained no temporal limitation, "the most accurate answer would have been yes."[48] Juror No. 6 was then excused and the Court ordered post-hearing briefing.[49]

Appellant filed a post-hearing supplement on January 14, 2025.[50] The State filed its supplemental brief two weeks later.[51] On February 12, 2025, the trial court convened a Status Hearing to allow the parties to answer questions unresolved by

---

[45] A1416-1418.

[46] A1418-19.

[47] A1419-22.

[48] A1431-32.

[49] A1433-34.

[50] A0011; A1436-73.

[51] A0011; A1474-84.

the briefing.[52] The Court also asked the parties to provide citations to any additional cases the Court should consider when deciding the motion.[53] Both parties did so on February 21, 2025.[54]

On January 9, 2026, the court sent a letter to the parties stating it was denying Appellant's Motion for New Trial and that a written opinion would be issued shortly thereafter.[55] The Superior Court issued that decision on February 5, 2026.[56] The trial court denied the Motion for New Trial after concluding that Juror No. 6's inaccurate answer to Q17 was an honest, inadvertent mistake rather than an intentional falsity.[57] The Court further held that an accurate answer would not have provided a valid basis to challenge Juror No. 6 for cause because the record did not demonstrate that her prior arrests affected her impartiality or created bias.[58] Finally, the Court rejected Appellant's argument that a new trial was warranted

---

[52] A0011; A1485-28.

[53] A1508-10.

[54] A0011; A1513-17.

[55] A0013; A1519.

[56] A1520-33; *see also State v. Mitchell*, 2026 WL 314309 (Del. Super. Ct. Jan. 6, 2026).

[57] A1529-30.

[58] A1531-32.

because the undisclosed information would have resulted in a peremptory strike, holding that an inaccurate *voir dire* response warrants relief only if the undisclosed information would have provided a basis to challenge the juror for cause.[59]

Sentencing

Mr. Mitchell was sentenced by the Superior Court on February 13, 2026.[60] The Court imposed a statutorily-mandated life sentence in connection with Mr. Mitchell's conviction for Murder in the First Degree.[61] The Court granted the State's motion to declare Mr. Mitchell an habitual offender as to the PFDCF and PFBPP charges, and imposed an unsuspended twenty-five years of Level V incarceration on each offense.[62]

A timely notice of appeal was filed on March 16, 2026.[63] This is Mr. Mitchell's Opening Brief.

---

[59] A1532.

[60] A0014; A1540-63; A1571-77.

[61] A1556-57; A1571.

[62] A1557-58; A1571-72.

[63] A0015.

SUMMARY OF ARGUMENT

1. The Superior Court committed plain error by allowing Raneesha Matthews, one of the State's principal witnesses, to testify pursuant to an immunity agreement that insulated her from prosecution for perjury. Delaware law prohibits such immunity because the threat of prosecution for perjury is a fundamental safeguard of truthful testimony. Here, the State granted Raneesha immunity after she repudiated her prior statement implicating Appellant, despite believing that her new account was false. That prior statement was the State's only evidence explaining how Appellant came to possess the Jeep Liberty used in the homicide. The State nevertheless used Raneesha's immunized testimony to introduce the statement and then urged the jury to believe her prior account instead. Allowing Raneesha to testify free from the consequences of perjury undermined the jury's ability to fairly assess her credibility and jeopardized the fairness and integrity of the trial. Reversal is therefore required.

2. The Superior Court erred in denying Appellant's Motion for New Trial after Juror No. 6 failed to disclose material information during *voir dire*. Juror No. 6 had twice been arrested and prosecuted by the State but did not disclose that history when asked whether she had ever been accused of a criminal offense. Had that information been disclosed, Appellant would have exercised a peremptory challenge to remove her from the jury. Although existing Delaware

law affords relief where undisclosed information would support a challenge for cause, it also recognizes that *voir dire* is essential to the intelligent exercise of peremptory challenges and that the nondisclosure of material information seriously impairs that right. Requiring a defendant to establish grounds for cause before obtaining relief fails to account for the distinct function of a peremptory challenge: the ability to remove a prospective juror without proving bias. Because Juror No. 6's nondisclosure deprived Appellant of the ability to effectively wield a peremptory challenge, the denial of his Motion for New Trial should be reversed.

STATEMENT OF FACTS

The Murder of D'Majah Tickles

On the evening of May 19, 2021, D'Majah Tickles was socializing on the 2300 block of Carter Street in Wilmington, Delaware.[64] Witnesses observed Mr. Tickles walking with a friend down 24th Street before turning onto Carter Street.[65] Moments later, a gold SUV approached with an unknown number of occupants inside.[66] At least two masked individuals were observed in the vehicle, one of whom was described as having dreadlocks.[67] The vehicle pulled alongside Mr. Tickles, a gunshot was fired, and Mr. Tickles fell to the ground.[68]

Wilmington Police responded and found Mr. Tickles lying in the roadway with a single gunshot wound to the chest.[69] He was transported to the hospital, where he later died from his injuries.[70]

---

[64] A0304; A0428-29.

[65] A0308.

[66] A0306-07; A0429.

[67] A0429; A0446-47.

[68] A0309-10.

[69] A0775-77.

[70] A0777; A0371.

The Investigation

Police recovered one spent 9-millimeter shell casing from the scene and a bullet from Mr. Tickles's back.[71]

Detective Brandon Mosely, the chief investigating officer, reviewed City Watch footage from cameras near the scene.[72] Although the cameras did not capture the shooting itself, they recorded a Jeep Liberty described as "tan in color or gold in color" traveling through the area around the time of the shooting.[73] Wilmington Police disseminated an image of the Jeep in a "Be On the Lookout" ("BOLO") alert.[74] The BOLO included the vehicle's license-plate information, noted that its rear tire holder was missing, and advised that the vehicle was wanted in connection with a homicide.[75]

A pizza delivery driver traveling to a customer at 2510 Carter Street around the time of the shooting told police that a "small" Jeep Liberty drove past him on

---

[71] A0378; A0477.

[72] A0343.

[73] A0343-55.

[74]A0578.

[75] A0570; A0578-79.

the street.[76] The Jeep soon returned down Carter Street, stopped adjacent to his vehicle, and a single shot was fired from inside.[77]

On May 26, 2021, Wilmington Police Officer Harry Mann located a vehicle matching the BOLO.[78] It was a gold 2007 Jeep Liberty occupied by Raneesha Matthews, Isaiah Matthews, and Vikaya Jamison.[79] All three were taken to Wilmington Police Headquarters and interviewed by Mosely.[80]

The following day, police processed the Jeep for evidence.[81] Although the vehicle was tested for latent fingerprints and DNA, Mosely did not order gunshot-residue or luminol testing, even though the State's theory was that Mr. Tickles had been shot from inside the Jeep while standing in close proximity to it.[82]

At the time of his death, Mr. Tickles was in a relationship with Jasmine Pruden, who had previously dated Tramont Mitchell.[83] According to Pruden, Mr.

---

[76] A0296-99.

[77] A0299.

[78] A0570.

[79] A0571.

[80] A0572.

[81] A1144.

[82] A1206-214.

[83] A1064-65.

Mitchell and Mr. Tickles did not get along, but Mr. Tickles was the aggressor in their interactions.[84] On one occasion, Mr. Tickles threatened to shoot Mr. Mitchell in the face.[85] Several weeks before the murder, another disagreement occurred between the two men.[86] Mr. Tickles's father, Jethroe, witnessed that incident and likewise described his son as the aggressor. To Jethroe's knowledge, the dispute concerned a woman.[87]

Pruden testified that Mr. Tickles had conflicts with several people and had been shot at on multiple occasions.[88] In December 2020, Pruden was present when someone attempted a drive-by shooting of Mr. Tickles.[89] In March 2021, Mr. Tickles was again the target of a drive-by shooting and told Pruden that a member of the 300 gang had shot at him.[90] That same month, Mr. Tickles told Pruden that one of his friends had been shot and killed.[91] Mr. Tickles was crying when he

---

[84] A1066; A1107.

[85] A1108.

[86] A0545.

[87] A545-46; A0525-26.

[88] A1081; A1076-77.

[89] A1077-78.

[90] A1082.

[91] A1087-88.

talked to Pruden about his friend's murder, stating that he and his friend "did something together, so I know they're coming for me next."[92]

Mr. Tickles also had conflicts within his family. One cousin, a member of the 300 Boys gang, "hated" him.[93] A few weeks before the murder, another cousin stole Mr. Tickles's car.[94] Mr. Tickles responded by breaking the cousin's jaw and later expressed concern that the cousin might retaliate.[95] Mr. Tickles carried a firearm and told Pruden that people were always going to try to kill him.[96] Pruden testified that by May 2021, she was afraid to be around Mr. Tickles because he had become too large a target.[97]

A close friend of Mr. Tickles also told police about Josh Bailey, known as "Beans," who, like Mr. Mitchell, had a history and a child with Pruden.[98] The witness stated that Mr. Mitchell and Bailey looked very similar, including the style

---

[92] A1088.

[93] A1083.

[94] A1085.

[95] A1085-86.

[96] A1087.

[97] A1090.

[98] A0609; A0612-13.

and color of their hair.[99] When asked whether he had previously seen Mr. Mitchell, the witness responded, "to be honest, I don't know if it was him or Beans. They look exactly alike."[100]

Forensic testing identified Mr. Mitchell's DNA on the Jeep Liberty's interior rearview mirror.[101] Mr. Mitchell's DNA was the only known sample submitted to the Delaware Division of Forensic Science for comparison.[102] A NIBIN report further indicated that the firearm used to kill Mr. Tickles may have been used in two other recent shootings.[103] No evidence connected Mr. Mitchell to either of those shootings, and police did not investigate whether the three shootings were related.[104] A witness also told police about a different gold Jeep Liberty parked in the area after the homicide.[105] Police did not investigate that vehicle.[106]

---

[99] A0609-610.

[100] A0613.

[101] A0832.

[102] A843-44.

[103] A1203; A1313.

[104] A1204.

[105] A1197.

[106] A1197.

Raneesha's Conflicting Statements

During her May 26, 2021 interview, Raneesha confirmed that she owned the gold 2007 Jeep Liberty.[107] She told police that approximately one week earlier she had allowed a friend, Tremont Murray, nicknamed "Mont," to use the Jeep.[108] Murray had borrowed the Jeep twice.[109] She described Murray as tall and thin, with braids and no tattoos.[110]

Mosely also interviewed Raneesha's mother, Mignon Matthews. Mignon told him that Raneesha was dating Mr. Mitchell and was pregnant with his child.[111] She also stated that she had personally seen Raneesha lend the Jeep to several different people on more than one occasion.[112]

Approximately one month before trial, Raneesha recanted her prior statement.[113] She told the prosecution she had lied to police and that Tyaire

---

[107] A0621.

[108] A0675-76.

[109] A0691.

[110] A0714.

[111] A0871.

[112] A0892-93.

[113] A0652.

Anderson, not Murray, had her Jeep on May 19, 2021.[114] Before testifying at trial on March 12, 2024, Raneesha signed an immunity agreement offered by the State.[115] She then testified that Anderson had the Jeep on the night of the homicide.[116] She unequivocally stated Appellant did not have the Jeep that night.[117]

Raneesha explained that she initially named Murray because she felt "railroaded" during the police interview and feared for her physical safety if she identified Anderson.[118] Under the pressure of the interview, she testified, Murray was the first name that came to mind.[119]

Mignon testified at trial that Raneesha had "quite a few things going on" and had been dating several men, including two men named Moe and Mel.[120] Mignon confirmed that Raneesha had previously allowed Moe to borrow the Jeep.[121] She

---

[114] A0652.

[115] A0646; A0660.

[116] A0626-28; A0644; A0652.

[117] A0629.

[118] A0637-38.

[119] A0640.

[120] A0889-890; A0901-02.

[121] A0891.

also confirmed that Raneesha had a friend named "Tyaire" who had borrowed the Jeep in the past.[122]

The "getback_fr33" Instagram

During the investigation, police downloaded the contents of phones belonging to Mr. Tickles, Raneesha Matthews, Isaiah Matthews, and Vikaya Jamison.[123] In Mr. Tickles's phone extraction, police found a screenshot of an Instagram direct message sent from an account using the handle "getback_fr33."[124] The message stated:

> Times up nigga hope you enjoyed your time with her because ain't no way I'm giving up i want her back and i don't care what I gotta do to get her back my manz. When i finally catch her alone you ain't never getting her back.[125]

Mr. Tickles responded, "Okay weirdo," and sent a photograph of himself and Pruden.[126]

In response to a search warrant, Facebook produced account information identifying (302) 543-3971 (the "3971 number") as the verified phone number

---

[122] A0898-99.

[123] A0979.

[124] A0958.

[125] A1016A; *see also* A0958.

[126] A0960.

associated with the "getback_fr33" account.[127] A DELJIS inquiry showed that Mr. Mitchell had provided the 3971 number to police in January 2020.[128] Although police developed a theory that Mr. Mitchell had threatened Mr. Tickles through the Instagram account, the authorities never searched the contents of Mr. Tickles's cellphone for communication with the 3971 number.[129]

At trial, the defense presented evidence establishing that the 3971 number belonged to Pruden.[130] The number appeared hundreds of times throughout Mr. Tickles's phone extraction in messages from "Other Half," the name under which Pruden was saved in his contacts.[131] Mosely acknowledged that, had he known this information during the investigation, he "possibly" would have investigated the Instagram account differently.[132]

---

[127] A0964-66.

[128] A0968.

[129] A0999-1002; A1176.

[130] A0997; A1092.

[131] A1156-57.

[132] A1004.

Pruden confirmed the 3971 number was hers.[133] She explained that when she and Mr. Mitchell were dating, he did not always have a phone.[134] He would sometimes provide her number when someone needed to contact him.[135] Although Pruden did not remember creating the "getback_fr33" account, she acknowledged that she had previously created Instagram accounts while pretending to be someone else.[136]

Mosely testified that, apart from the threatening "getback_fr33" Instagram messages, the only evidence demonstrating animosity between Mr. Mitchell and Mr. Tickles consisted of witness testimony, including Pruden's.[137]

---

[133] A1092.

[134] A1092.

[135] A1092-93.

[136] A1101.

[137] A1008.

ARGUMENT

CLAIM I. THE SUPERIOR COURT COMMITTED PLAIN ERROR BY PERMITTING A CRITICAL PROSECUTION WITNESS TO TESTIFY WITH IMMUNITY FROM PROSECUTION FOR PERJURY.

A. Question Presented

Whether the Superior Court committed plain error by allowing Raneesha Matthews, one of the State's principal witnesses, to testify pursuant to an immunity agreement that insulated her from prosecution for perjury arising from that testimony. This issue was not preserved in the Superior Court as defense counsel did not object. As such, Appellant respectfully seeks review under Supreme Court Rule 8. When the interests of justice require, this Court may consider and determine issues not presented to the trial court.

B. Standard and Scope of Review

This Court generally applies an abuse of discretion standard when reviewing a trial court's decision on the admissibility of evidence and testimony.[138] Because the issue was not raised below, however, this Court reviews for plain error.[139] This Court has held that "under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness

[138] *Campbell v. State*, 974 A.2d 156, 170 (Del. 2009); *Williamson v. State*, 707 A.2d 350, 354 (Del. 1998).

[139] *McCrary v. State*, 290 A.3d 442 (Del. 2023).

and integrity of the trial process."[140] Moreover, "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 deprive an accused of a substantial right, or which clearly show manifest injustice."[141]

C. Merits of Argument

Applicable Legal Precepts

"The power of government to compel persons to testify in court or before grand juries or other governmental agencies is firmly established in Anglo–American jurisprudence."[142] There are, however, "a number of exceptions from the testimonial duty, the most important of which is the Fifth Amendment privilege against compulsory self-incrimination."[143] The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . compelled in any criminal case to be a witness against himself . . . ."[144] Thus, immunity statutes

---

[140] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

[141] *Id*.

[142] *Kastigar v. United States*, 406 U.S. 441, 443 (1972).

[143] *Id*. at 444.

[144] U.S. Const. amend. V; *see also* Del. Const. Art. I, § 7 ("In all criminal prosecutions, the accused . . . shall not be compelled to give evidence against himself or herself . . . .").

"seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify."[145]

Under Delaware law, there are two recognized pathways for an individual to receive immunity. First, under the Delaware Immunity Statute, the Superior Court can compel testimony from witnesses refusing to answer questions due to fear of self-incrimination.[146] Alternatively, the Attorney General or a Deputy Attorney General can enter into an immunity agreement with an individual independent of judicial action.[147]

A witness who is afforded immunity from prosecution cannot refuse to testify on the ground of self-incrimination.[148] The granting of immunity, however, does not permit a witness to commit perjury or contempt with impunity. Only prior crimes are protected by the Fifth Amendment.[149] Since the witness has not

---

[145] *Kastigar*, 406 U.S. at 446.

[146] *See* 11 *Del. C.* § 3506.

[147] *See* 11 *Del. C.* § 475 (establishing the affirmative defense of immunity where the accused was granted immunity by the Department of Justice or by the Superior Court pursuant to Section 3506); *see also Collins v. State*, 420 A.2d 170, 174 (1980) (acknowledging that Section 475 "recognizes the power of the Attorney General and his deputies . . . to grant immunity from prosecution . . .").

[148] *See* 11 *Del. C.* § 475.

[149] *See United States v. Freed*, 401 U.S. 601, 606-07 (1971) (rejecting the notion that the Fifth Amendment "protects a person against incrimination not only against past or present transgressions but which supplies insulation for a career of crime

testified at the time she is granted immunity, her subsequent perjury is unprotected.[150]

Unsurprisingly then, the Immunity Statute contains an explicit exception as to perjury:

> In no event, however, shall such person, acting pursuant to such order [granting immunity], be exempt from prosecution or penalty or forfeiture for any perjury, false statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order, and any testimony or evidence so given or produced shall not by virtue of this section be rendered inadmissible in evidence upon any criminal action, investigation or proceeding concerning such perjury, false statement or contempt.[151]

This Court has held the terms of the Immunity Statute apply equally to immunity agreements extended by the State.[152] Simply put, no grant of immunity in Delaware can protect a witness against a charge of perjury for false testimony offered pursuant to such immunity.

---

about to be launched"); *Daniels v. United States*, 196 F. 459, 463 (6th Cir. 1912) (holding that both the Fifth Amendment and grants of immunity apply only to crimes which have already been committed).

[150] *See Daniels*, 196 F. at 463-65.

[151] 11 *Del. C.* § 3506(a).

[152] *See Durham v. State*, 2016 WL 499348 at *3 (Del. Supr. Feb. 8, 2016) (holding that where a witness fails to testify consistently with the conditions of their State-granted immunity agreements, the Delaware Immunity Statute establishes a mechanism for the State to penalize such witness).

Relevant Factual Background

On May 26, 2021, Raneesha spoke with the authorities in connection with this case.[153] Raneesha told the police that she recently purchased a 2007 Jeep Liberty she found on Facebook Marketplace.[154] She went on to say that she let one person, Tremont Murray, use the vehicle one week earlier on Wednesday, May 19, 2021.[155] She stated Tremont Murray's birthday was on Christmas Day.[156] Raneesha stated that when the individual returned the vehicle, he asked her not to drive it and "wanted to basically keep the car parked."[157]

Within a month of trial, Raneesha spoke with the prosecution again.[158] During that meeting, Raneesha informed the State that she was not honest during her prior interview in May 2021 and that she had actually given her car to an individual named Tyaire Anderson, not Tremont Murray.[159]

---

[153] A0631; A0661-745.

[154] A0670-71.

[155] A0675; A0699.

[156] A0708.

[157] A0674.

[158] A0649.

[159] A0648-52.

The parties raised concerns about Raneesha's testimony with the trial court hours before she was likely to testify:

> THE STATE: Your Honor, there are other matters that the Parties would like to take up before the testimony of the witness this afternoon.
>
> THE DEFENSE: Mr. Rosen and I had a conversation earlier this morning. Raneesha Matthews is likely to testify this afternoon. So the State's position is that at some point during this investigation she lied to investigators. It is unclear what she will be saying today. Either way, the State is either going to ask -- try to establish that she did lie during the investigation, or that she is lying now. Mr. Rosen and I both believe that there is a pretty likely possibility that she could incriminate herself as either hindering, or perjury herself. So we discussed the possibility of her speaking with Conflicts Counsel before testifying. I think Mr. Rosen wants to talk to the Appellate Unit, or somebody at the Department of Justice, before making any decisions about anything. But I have alerted Miss [Volturo] at the Office of Conflicts Counsel that we may need a conflict attorney this afternoon, and she has already put out an email trying to find somebody else.
>
> THE COURT: Okay. Mr. Rosen.
>
> THE STATE: That is correct, Your Honor. We just wanted to give the Court a heads up. We can get more information at the end of lunch break, hopefully, as to what the State's position is going to be.[160]

[160] A0558-60.

Thereafter, the Court took a recess for lunch.[161] Once the trial resumed, Appellant alerted the Court that a conflict attorney had arrived to represent Raneesha.[162]

Within two hours, the State informed the Court that it had brokered an Immunity Agreement with Raneesha, a copy of which it was admitting into evidence as Court's Exhibit 6.[163] The Agreement had two relevant provisions:

> The State acknowledges that it will not use the testimony she will provide as evidence against her in criminal prosecutions for the crimes she testified about and admitted liability for.
>
> The State will not use the testimony of Raneesha Matthews to prosecute her for *any criminal activity that was included in her testimony*.[164]

The State then called Raneesha to testify.[165]

During its direct examination, the State initially avoided asking Raneesha about anything other than her May 2021 interview with the police.[166] Only after the trial court refused to admit that interview into evidence pursuant to Section 3507 of Title 11 did the State ask Raneesha any questions about who had her

---

[161] A0567.

[162] A0567.

[163] A0595.

[164] A0660 (emphasis added).

[165] A0596.

[166] *See* A0620-26.

vehicle on or about May 19.[167] Raneesha testified consistent with her recent statement to the authorities, stating an individual named Tyaire had her vehicle at the time of the murder, not Appellant.[168] Having now satisfied the admission requirements of Section 3507, the State played Raneesha's interview for the jury.[169] At no point during Raneesha's direct examination did the State reference the Agreement or take any steps to alert the jury that Raneesha had been fully immunized for her testimony.[170]

On cross-examination, Appellant confronted Raneesha with the Agreement, publishing it to both her and the jury.[171] Raneesha testified she understood that she could not be prosecuted for previously lying to the police and that no charges could arise based on her testimony in court that day.[172]

During the State's closing argument, the prosecutor said:

> What else can you be certain of? The defendant had [Raneesha] Matthews' gold Jeep Liberty on the night of the murder. You can be certain of that based on the evidence. How? Well, you heard from

[167] A0625-29.

[168] A0627-29.

[169] A0629-33.

[170] *See generally* A0619-35.

[171] A0648.

[172] A0646-48.

> [Raneesha] Matthews, and she came into court and she said something entirely different that what she said a week after the homicide. One week after the homicide she said that the only person allowed to use the car is Tramont. Now, she says Murray, but you heard that one of the defendant's parents' last name's Murray. She also gives his birthday as Christmas day, which matches the defendant.
>
> She says in that statement that when the defendant returned the car to her that night around eleven o'clock, he said, "We're not driving that." That was her initial statement. Then she comes into court, and for the first time -- or not the first time, but the first time since a recent incident in trial prep, she says that she lent the car to someone named Tyaire. Tyaire was close enough to her to be like a brother, but she had to be reminded of his last name. In trial prep she said that Tyaire's 32 years old, that he lives on the West Side, and he would be 32 years old if he had not been dead for years.
>
> You're going to have to determine which of those statements is credible, that's part of your job as jurors. And one of those things is about plain believability, right, is it credible that this random person who is as close as a brother to [Raneesha] but she doesn't know his last name, is that credible to you? Totally up to you, you are the sole judges of credibility.[173]

The prosecution did not mention the Agreement during the entirety of its closing argument or rebuttal.[174]

During Appellant's closing argument, the following was said about Raneesha:

> [L]et's talk about [Raneesha] and the Jeep Liberty. The State suggests to you that [Raneesha] Matthews was honest in her initial statement when she said it was Tramont Murray who had her car and dishonest

[173] A1301.

[174] A1300-05; A1314-15.

on the stand under oath when she said it was Tyaire Anderson. Here's what you need to keep in mind when you're evaluating [Raneesha's] testimony.

First, she said she was afraid of Tyaire Anderson, that she was afraid for her physical safety. I asked Detective Mosley if witnesses will sometimes give false statements to the police because they're worried about retaliation, if they're worried about, you know, whoever they're talking about coming at them and causing them physical violence. And Detective Mosley said, I don't know, I've never had that happen, as though we don't all know that that happens.

The other thing you need to consider is that the fact that the State knew, I don't know, like two weeks before trial that [Raneesha] was now saying it was Tyaire Anderson, she told them. She didn't try to surprise them on the stand, she didn't try to catch them off guard, which is what one -- which is what you think one would do if they were trying to lie for their boyfriend and get one over on the State that you don't think that they would tell them up front, hey, in a few weeks I'm going to testify that it was Tyaire Anderson falsely, no, she was up front and honest with them about it.

And keep in mind, if she came in here and she testified that it was Tyaire Anderson, the State could charge her with perjury if they believed -- if they felt they could prove that that was a lie. Instead they give her immunity. They knew she was going to come in and testify that it was Tyaire Anderson, and they gave her immunity. Somebody with immunity has no reason to lie, because the immunity is very limited. What the immunity was, as we went through this with [Raneesha], anything she says on that witness stand cannot be used against her in any criminal proceeding. The State knew she was going to say Tyaire Anderson, and they gave her immunity, why should you doubt her? What reason does she have to lie at that point?[175]

[175] A1308.

The State raised no objection to Appellant's discussion of the Agreement or the protection it provided Raneesha against a perjury prosecution.[176]

Other than accepting the Agreement as a Court Exhibit, the Superior Court never discussed the document with the parties, nor did it provide an instruction to the jury advising how to evaluate Raneesha's testimony in light of her immunization.

Argument

The text of the Agreement, the circumstances surrounding its execution, and the parties' contemporaneous understanding of its scope demonstrate that Raneesha was protected from the consequences of perjury committed during her testimony. The issue of immunity arose only after the parties specifically alerted the Superior Court that Raneesha's anticipated testimony could expose her to a charge of perjury. The State was aware Raneesha was likely to testify that Tyaire Anderson had her vehicle on the night of the homicide and, as evidenced by its closing argument, believed Raneesha was lying to protect Appellant. Yet the State could not simply opt to exclude Raneesha from its case-in-chief. Her May 26, 2021 statement was the only evidence explaining how Appellant could have had control of the Jeep at the time of the homicide.

[176] *See* A1308.

Rather than sacrifice that evidence through Raneesha's likely invocation of her right against self-incrimination, the State presented her with an agreement providing that her testimony could not be used to prosecute her for any criminal activity included therein. Raneesha subsequently confirmed her understanding that no charges could arise based upon her testimony that day. During closing argument, Appellant expressly argued that although the State could ordinarily prosecute Raneesha for perjury if her testimony concerning Tyaire Anderson was false, it had instead granted her immunity, explaining that anything she said on the witness stand could not be used against her in a criminal proceeding. The State did not object to or correct that characterization. Simply put, the Agreement did not merely immunize Raneesha for crimes committed before she took the stand. It insulated her from criminal consequences arising from the testimony she was about to provide, including the very crime the State believed she was about to commit: perjury. The Superior Court plainly erred when it permitted Raneesha to testify with absolute immunity.

Disposition of this issue is governed by this Court's 2015 decision in *Worthy v. State*.[177] In *Worthy*, the defendant allegedly threatened his mother and brother with a firearm.[178] Worthy's mother, Valerie Coleman, called 911 to report the

[177] 120 A.3d 581 (Del. 2015).

[178] *Id*. at 582.

incident, leading to her son's arrest and prosecution.[179] Although the State subpoenaed Coleman, she failed to appear at trial.[180] Upon the State's request, the Superior Court issued a material witness warrant and Coleman was subsequently tracked down and incarcerated pending her testimony.[181] During her direct examination, Coleman was "argumentative" and recanted her prior statements about Worthy possessing a firearm.[182] Coleman eventually invoked the Fifth Amendment and refused to answer any further questions.[183]

The Superior Court excused the jury to speak with Coleman and the parties.[184] The trial court inquired as to whether the State was going to offer Coleman immunity, prompting the prosecutor to respond the witness was "not facing the potential for any criminal prosecution other than perjury."[185] The Court advised that Coleman could still invoke the Fifth Amendment and asked whether

---

[179] *Id*.

[180] *Id*.

[181] *Id*.

[182] *Id*. at 583.

[183] *Id*. at 584.

[184] *Id*.

[185] *Id*.

the State was offering "full immunity . . . on everything."[186] The prosecution answered in the affirmative, prompting the judge to advise the witness that she had to answer any question posed to her "because there's no possible crime [she] could commit. Even if [Coleman] commit[ed] a crime by [her] testimony, the State has basically said that [she] cannot be prosecuted."[187] The defense objected, arguing "the State has just given Ms. Coleman carte blanche to lie and with no repercussion which absolutely voids the oath which she's taken on the stand[.]"[188] The Superior Court overruled the objection and permitted Coleman to testify with absolute immunity.[189] Worthy was eventually convicted of one count of Aggravated Menacing related to Coleman.[190]

On appeal, this Court reversed Worthy's conviction, holding unequivocally that "[u]nder Delaware law, the Superior Court cannot grant a witness immunity from perjury."[191] The State offered no substantive response to the immunization

---

[186] *Id*.

[187] *Id*.

[188] *Id*.

[189] *Id*.

[190] *Id*. at 585.

[191] *Id*.

against perjury, instead arguing that even if the grant of immunity was improper, it was harmless error.[192] The State contended that the error was harmless beyond a reasonable doubt "because Worthy had the opportunity to cross-examine Coleman on her understanding of the grant of immunity, as well as her inconsistent statements."[193]

This Court rejected that argument:

> In making that credibility determination [regarding Coleman], the offer of "full immunity" to Coleman was highly relevant. She failed to appear at trial, was aggravated by being arrested and put in jail, and may not have wanted to be the cause of a long prison sentence for her son. Knowing that she was immune from any consequences for lying under oath could have persuaded the jury to believe her earlier statements to the police, which incriminated Worthy, over her trial testimony, which tended to exculpate him.
>
> We recognize that an overbroad grant of immunity could also be viewed as giving Coleman free rein to testify favorably in Worthy's defense, and that the jury apparently rejected her trial testimony. But Coleman's testimony was central to the prosecution's case and an untainted testing of her credibility was indispensable for the jury to determine the weight to be given to the statements made during the 911 call and to the police after the incident.[194]

After evaluating the specifics of Worthy's case, this Court went on to declare the state of the law going forward in this State:

---

[192] *Id*. at 585-86.

[193] *Id*. at 586.

[194] *Id*. at 586-87.

> We believe that it would be hazardous to speculate after the fact what effect exempting a witness from a major portion of the affirmation that all witnesses must give—acknowledging that they face possible prosecution for perjury if they testify untruthfully—had on the witness' testimony or the jury's reaction to it. When a witness is critical to the State's case, as was the situation here, that witness must be subject to the consequences for perjury faced by all other witnesses. Although it is doubtless the case that the ritual of requiring a witness to affirm her duty to testify truthfully under penalty of perjury does not deter all witnesses from lying on the stand, our law regards this affirmation as a baseline requirement of justice in all cases, civil or criminal, and one that plays a useful role in producing good faith testimony. When the consequences are as important as those faced by a defendant in a felony trial, we cannot deem the elimination of this fundamental requirement as to an important prosecution witness to be harmless beyond a reasonable doubt.[195]

Worthy dictates the outcome of this case. There, Coleman's in-court testimony contradicted her earlier statements to police, just as Raneesha's did here. Just as they did with Coleman, the State offered Raneesha immunity not only for "the crimes she testified about and admitted liability for," but also "any criminal behavior that was included in her testimony."[196] In *Worthy*, Coleman was one of the only witnesses who could provide evidence that the defendant possessed a firearm. Here, Raneesha was the only witness capable of explaining how Mr. Mitchell had access to the gold Jeep Liberty on the night of the homicide. And just as in *Worthy*, the jury, having been informed that Raneesha could testify without

[195] *Id*. at 587.

[196] A0660.

fear that her testimony would be used to prosecute her for perjury, could have been persuaded to believe her earlier statement to the police, which incriminated Appellant, over her trial testimony, which tended to exculpate him. As in *Worthy*, it was improper for the State to give Raneesha absolute immunity, and it was error for the Court to permit Raneesha to testify free from the fear of prosecution for perjury.

Because Appellant did not object to the scope of Raneesha's immunity below, however, the existence of reversible error under *Worthy* does not end the inquiry. To warrant reversal under the plain error standard, the error must constitute a material defect apparent on the face of the record that is basic, serious, and fundamental in character, and must clearly deprive the accused of a substantial right or otherwise demonstrate manifest injustice.[197] The error must also be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.[198]

Permitting Raneesha to testify with full immunity satisfied that standard. This presents a matter of first impression in Delaware, as this Court has never considered whether permitting a witness to testify with immunity from prosecution

[197] *Wainwright*, 504 A.2d at 1100.

[198] *Id*.

for perjury constitutes plain error.[199] The Appellate Court of Connecticut addressed that precise question, however, in *State v. Simmons*.[200]

As happened here, the prosecution in *Simmons* granted a witness full immunity protecting him from perjury charges related to his in-court testimony.[201] In assessing whether plain error existed, the Connecticut Court determined that such an agreement "violates public policy and undermines confidence in our judicial system."[202] The *Simmons* Court recognized that because one of the primary functions of trial was to "search for the truth," a trial court "has a duty to preside at trial and to take appropriate actions, when necessary, to promote truth at trial."[203] The Appellate Court noted that, "[f]rom ancient times," it has been essential for witnesses to swear or affirm prior to testifying, and that laws prohibiting perjury play a "critical role in the search for truth at trial because [they] significantly deter[] a witness who takes an oath or affirmation from testifying

---

[199] *But see Jenkins v. State*, 305 A.2d 610 (Del. 1973) (holding grant of immunity that did not extend to perjury to an individual who was not a codefendant or conspirator did not constitute plain error).

[200] 205 A.3d 569 (Conn. App. Ct. 2019).

[201] *Id*. at 580.

[202] *Id*.

[203] *Id*. at 581 (internal citations omitted).

falsely at a time when the witness' testimony will significantly impact the rights of a defendant."[204] The *Simmons* Court determined that where the State promises immunity from prosecution for perjury to overcome a witness's invocation of their Fifth Amendment rights against self-incrimination as a means to force that witness to testify, such promise "plainly violate[s] the strong public policy that is reflected in the statutory prohibition" contained in perjury statutes.[205]

The reasoning of *Simmons* is persuasive here. Like Connecticut, Delaware has expressly prohibited granting a witness immunity from prosecution for perjury. Both *Simmons* and *Worthy* recognize that this prohibition is fundamental to the truth-seeking function of a trial because the threat of prosecution for perjury provides an essential safeguard against false testimony. Thus, although *Simmons* applied Connecticut's plain error standard, its reasoning supports the conclusion that permitting a witness to testify with immunity from perjury constitutes the type of fundamental defect capable of satisfying Delaware's plain error standard.

The error here was apparent on the face of the record. Before Raneesha ever took the witness stand, the parties expressly alerted the Superior Court that her anticipated testimony created potential exposure to perjury. The Court knew

---

[204] *Id*.

[205] *Id*. at 582.

counsel had been appointed for Raneesha because of that exposure. The resulting Agreement was then presented to the Court, admitted as a Court Exhibit, and followed immediately by Raneesha's testimony. Thus, every fact necessary to recognize the defect was before the Superior Court. Recognition of the error required no extension of Delaware law: Section 3506 expressly provides that an immunized witness may not be exempted from prosecution for perjury, and Worthy had already held that a critical witness must remain subject to the consequences of perjury faced by every other witness.

The error was also basic, serious, and fundamental in character. *Worthy* did not describe exposure to prosecution for perjury as a technical limitation on the scope of immunity. Instead, this Court characterized the requirement that a witness testify truthfully under penalty of perjury as a "baseline requirement of justice in all cases, civil or criminal."[206] *Simmons* reached the same conclusion in the plain error context, recognizing that laws prohibiting perjury play a critical role in the search for truth at trial and that immunity from those laws undermines confidence in the judicial process.[207] Eliminating a requirement this Court has expressly deemed fundamental to the truth-seeking function of a trial satisfies the

[206] *Worthy*, 120 A.3d at 587.

[207] *Simmons*, 205 A.3d at 581.

character of error contemplated by the plain-error standard, particularly where the witness was critical to the prosecution's case.

Raneesha was such a witness. The prosecution's theory was that Appellant used Raneesha's vehicle on the night of the homicide. Her 3507 statement was the only evidence explaining how Appellant could have possessed that vehicle. When the Superior Court initially refused to admit the statement without the testimony required by Section 3507, the State elicited testimony from Raneesha concerning who possessed the Jeep and then introduced her prior statement. The immunity was therefore not incidental to cumulative testimony. It enabled the State to place before the jury evidence necessary to connect Appellant to the vehicle the prosecution contended was used in the murder.

The resulting prejudice cannot be dismissed by observing that Raneesha's trial testimony tended to favor Appellant, as *Worthy* rejected that precise reasoning. The relevant harm is the corruption of the jury's ability to make an untainted credibility determination between an inculpatory prior statement and exculpatory trial testimony. Here, the State granted Raneesha immunity after learning she would repudiate her prior statement, introduced that prior statement through her testimony, and then urged the jury to find that her immunized testimony was false and her earlier statement was true. As *Worthy* recognized, it is

hazardous to speculate after the fact about what effect immunity from perjury had upon either the witness or the jury charged with deciding which version to believe.

Nor does the absence of a contemporaneous objection make the defect any less apparent on this record. Appellant did not request the Agreement, negotiate its terms, or ask the Court to immunize Raneesha from perjury. By the time defense counsel addressed the Agreement during closing argument, Raneesha had already testified and the challenged error had already occurred. Counsel's effort to argue from the record then before the jury does not alter the circumstances under which the State obtained and presented Raneesha's testimony.

Permitting Raneesha to testify under an agreement insulating her from the consequences of perjury was a material defect apparent on the face of the record, basic and fundamental in character, and clearly prejudicial to Appellant's substantial rights. It compromised the credibility determination surrounding evidence critical to the State's theory of the case and jeopardized the fairness and integrity of the trial process. The Superior Court committed plain error, and Appellant's convictions must be reversed.

CLAIM II. THE SUPERIOR COURT ERRED IN DENYING APPELLANT'S MOTION FOR NEW TRIAL WHERE JUROR NO. 6'S FAILURE TO DISCLOSE MATERIAL INFORMATION DURING *VOIR DIRE* DEPRIVED APPELLANT OF THE INTELLIGENT EXERCISE OF A PEREMPTORY CHALLENGE.

A. Question Presented

Whether a defendant is entitled to a new trial when a juror fails to disclose material information during *voir dire* that would have resulted in the exercise of a peremptory challenge, thereby depriving the defendant of the ability to effectively wield that right, even though the information would not have provided a basis to challenge the juror for cause. This issue was preserved via the filing of a Motion for New Trial, as well as oral argument and subsequent briefing in support thereof.[208]

B. Standard and Scope of Review

The Superior Court's denial of a motion for new trial is ordinarily reviewed for abuse of discretion.[209] Where the challenge concerns the Superior Court's legal conclusions, however, this Court reviews those conclusions "*de novo* for errors in formulating or applying legal precepts."[210] To the extent the Superior Court made

---

[208] A0010; A1338-60; A1441-42; A1485-1512.

[209] *Waters v. State*, 242 A.3d 778, 782 (Del. 2020).

[210] *Id.* (quoting *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284-85 (Del. 2008)).

factual findings concerning Juror No. 6's credibility or impartiality, those findings are not challenged in this appeal.

C. Merits of Argument

Applicable Legal Precepts

Both the federal and Delaware Constitutions guarantee every criminal defendant the right to an impartial jury.[211] "Primary among the requisite safeguards for a fair and impartial jury is a defendant's right to challenge prospective jurors, either peremptorily or for cause."[212] That right is undermined, however, when a juror fails to accurately respond to questions posed during *voir dire*.[213] The purpose of *voir dire* is to provide both the trial court and the parties with "sufficient information to decide whether prospective jurors can render an impartial verdict based on the evidence developed at trial and in accordance with

[211] U.S. Const. Amend. VI; Del. Const. Art. I, § 7. *See also Flonnory v. State*, 778 A.2d 1044, 1052 (Del. 2001).

[212] *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977).

[213] *See id*.

the applicable law."[214] "[I]f only one juror is improperly influenced, a defendant in a criminal case is denied his Sixth Amendment right to an impartial jury."[215]

"In addressing what consequences should follow when jurors have failed to answer material questions during *voir dire* accurately, the law distinguishes between situations where a juror's failure to answer accurately was deliberate, rather than inadvertent."[216] If a juror deliberately fails to honestly answer a material question during the *voir dire* process, "that dishonesty is considered to be, in itself, sufficient evidence of bias to require that the defendant be afforded a new trial."[217]

In situations where a juror inadvertently fails to accurately answer a *voir dire* question, however, this Court has adopted the test promulgated in *McDonough Power Equipment Inc. v. Greenwood*[218] by the Supreme Court of the United

---

[214] *Hughes v. State*, 490 A.2d 1034, 1041 (Del. 1985) (citing *Parson v. State*, 275 A.2d 777, 780 (Del. 1971)); *see also Diaz v. State*, 743 A.2d 1166, 1172 (Del. 1999) ("*Voir dire* is critical to protecting a defendant's Sixth Amendment right to a fair trial by an impartial jury.").

[215] *Hall v. State*, 12 A.3d 1123, 1127 (Del. 2010) (quoting *Styler v. State*, 417 A.2d 948, 951-52 (Del. 1980)).

[216] *Cooke v. State*, 97 A.3d 513, 554 (Del. 2014).

[217] *Id*.

[218] 464 U.S. 548 (1984).

States.[219] Under *McDonough*, a defendant must first show that "a juror failed to answer honestly a material question on *voir dire*," then demonstrate that "a correct answer would have provided a valid basis for a challenge for cause."[220]

In *Banther v. State*, when discussing the issue of a juror failing to accurately answer a material *voir dire* question, this Court recognized that "[o]ne of the primary safeguards for impaneling a fair and impartial jury is a defendant's right to challenge prospective jurors, *either peremptorily or for cause*."[221] This Court went on to state that "that right to challenge is seriously impaired by a juror's denial or nondisclosure of material information in response to a *voir dire* question."[222]

The traditional *McDonough* test protects a defendant where undisclosed information would have established a valid basis to challenge a juror for cause. Delaware law, however, independently recognizes the peremptory challenge as a primary safeguard in securing an impartial jury and recognizes that a juror's nondisclosure of material information seriously impairs the intelligent exercise of that right. Limiting relief to cases in which the undisclosed information would

---

[219] *Cooke*, 97 A.3d at 554.

[220] *Id*. (quoting *Schwan v. State*, 65 A.3d 582, 591 (Del. 2013)).

[221] *Banther v. State*, 823 A.2d 467, 482 (Del. 2003) (citing *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977)) (emphasis added).

[222] *Id*.

support a challenge for cause leaves no remedy when a juror's inaccurate answer deprives a defendant of information that would have resulted in the exercise of a peremptory challenge. Such a result fails to account for the distinct role of peremptory challenges and leaves the right recognized in *Banther* without a remedy precisely when a juror's nondisclosure prevents the defendant from exercising it. Such a scenario is unacceptable in Delaware, where this Court has uniformly recognized "that every right, when withheld, must have a remedy, and every injury its proper redress."[223]

Argument

Had Juror No. 6 accurately answered Q17 and remained in the venire, Appellant would have peremptorily struck the prospective juror based on her prior arrests and the dismissal of her cases by the State. Knowledge that the State had twice prosecuted Juror No. 6 and then dismissed those charges was information defense counsel was entitled to consider in deciding whether to entrust Mr. Mitchell's fate to her. Whether that history *actually* rendered Juror No. 6 biased is beside the point. The defining feature of a peremptory challenge is that counsel need not establish bias before exercising it. Indeed, requiring Appellant to demonstrate that Juror No. 6's undisclosed history rendered her actually biased

[223] *Dorsey v. State*, 761 A.2d 807, 816 (Del. 2000) (internal citations omitted).

would effectively collapse the distinction between a peremptory challenge and a challenge for cause. Because Juror No. 6 failed to disclose material information that would have resulted in the exercise of a peremptory strike, Appellant was deprived of the opportunity to knowingly and intelligently exercise the right Delaware law afforded him. Given *Banther*'s recognition that a juror's nondisclosure of material information seriously impairs that right, the Superior Court should have granted Appellant's Motion for New Trial. Its failure to do so warrants reversal.

A defendant's right to challenge prospective jurors, either peremptorily or for cause, is one of the primary safeguards to his effort to secure an impartial jury.[224] This Court has recognized that *voir dire* is "essential in permitting the intelligent use of peremptory challenges," and that impairment of that right is reversible error without a showing of prejudice.[225] Peremptory challenges serve an important function precisely because they permit a defendant to remove a prospective juror without establishing grounds for a challenge for cause.[226] Indeed, this Court has recognized that "peremptory challenges, when appropriately

[224] *Jackson*, 374 A.2d at 2.

[225] *Hughes*, 490 A.2d at 1044.

[226] *Schwan*, 65 A.3d at 588.

executed, are an essential tool for eliminating potential jury bias"[227] and that when material information is not disclosed during *voir dire* and the prospective juror ultimately serves on the jury, the defendant is deprived of the "historically important peremptory challenge right to remove a juror without showing cause."[228]

A minority of jurisdictions have recognized that limiting relief to circumstances in which undisclosed information would support a challenge for cause fails to account for the distinct role of peremptory challenges. Florida, for example, has held that "a juror's concealment of information which may have been material to whether that juror would be excused by peremptory challenge or for cause, when such concealment is not revealed or discovered until after trial, can in certain circumstances justify the granting of a new trial."[229] South Carolina employs a similar rule, requiring relief "when the court finds the concealed information would have supported a challenge for cause, or would have been a material factor in the use of the party's peremptory challenges."[230] This Court should adopt a similar standard. Such a rule gives effect to the distinct functions of

---

[227] *Riley v. State*, 496 A.2d 997, 1012 (Del. 1985).

[228] *Schwan*, 65 A.3d at 588.

[229] *Feagin v. State*, 307 So.3d 988, 993 (Fla. Dist. Ct. App. 2020) (internal citations omitted).

[230] *Hassell v. City of Columbia*, 846 S.E.2d 373, 378 (S.C. Ct. App. 2020).

challenges for cause and peremptory challenges while ensuring that a juror's failure to disclose material information does not deprive a defendant of the ability to intelligently exercise either.

This Court has emphasized the importance of preserving the right to exercise peremptory challenges. In *McCoy v. State*, the Court recognized that, although peremptory challenges are not constitutionally required, they remain "one of the most important rights secured to [the] accused" and "ensure the jury that hears the case is acceptable to the parties involved and preserve the role of litigants in determining the jury's composition."[231] Because states that provide peremptory challenges confer a protection beyond the federal constitutional minimum, they retain discretion to design and implement their own systems governing the exercise of that right.[232] Delaware has exercised that discretion by recognizing that voir dire must permit the intelligent exercise of peremptory challenges and that the nondisclosure of material information can seriously impair that right.[233] A rule that affords relief only when undisclosed information would establish a challenge for cause would fail to protect the distinct function of the peremptory challenge—the

---

[231] *McCoy v. State*, 112 A.3d 239, 254–55 (Del. 2015) (internal quotations and citations omitted).

[232] *Id*. at 255.

[233] *See Hughes*, 490 A.2d at 1044; *Banther*, 823 A.2d at 482.

ability to remove a prospective juror without showing cause. That does not mean that every inaccurate response to a *voir dire* question warrants a new trial; relief is appropriate where the undisclosed information was material and, if disclosed, would have resulted in the exercise of a peremptory challenge. Where, as here, a juror's failure to disclose material information deprived a defendant of information that would have resulted in the exercise of a peremptory challenge, a new trial is required. Such a rule would provide a remedy for the violation of the due process right to peremptory challenges. The Superior Court erred in denying Appellant's Motion for New Trial, and this Court should reverse.

CONCLUSION

For the reasons stated herein, Mr. Mitchell respectfully requests that this Honorable Court reverse his convictions and remand the case for a new trial.

THE LAW OFFICE OF
BENJAMIN S. GIFFORD IV

/s/ *Benjamin S. Gifford IV*_____
Benjamin S. Gifford IV
Haley Q. Lopez
14 Ashley Place
Wilmington, DE 19804
302.304.8544

Attorneys for Defendant Below - Appellant

Dated: August 27, 2026