EFiled: Sep 29 2026 03:17PM EDT
Filing ID 80777328
Case Number 119,2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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Dated: September 29, 2026

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NATURE AND STAGE OF THE PROCEEDINGS

On February 28, 2022, a grand jury returned an indictment against Tramont Mitchell ("Mitchell") charging him with Murder First Degree, Possession of a Firearm During the Commission of a Felony ("PFDCF") and Possession of a Firearm by a Person Prohibited ("PFBPP"). (A0001, A0033-34). On March 4, 2024, Mitchell presented an oral application to sever the PFBPP charge, which the court granted. (A0005, A0060-61). The case proceeded to trial on March 11, 2024, and a jury found Mitchell guilty of Murder First Degree and PFDCF. (A0007). Mitchell elected a bench trial on the remaining PFDCF charge, and the trial judge found him guilty. A0007. On May 15, 2024, the State moved to declare Mitchell an habitual offender, which the court granted. (A0007).

On July 31, 2024, Mitchell filed a Motion for a New Trial grounded in a claim that Juror No. 6 failed to disclose two arrests for Offensive Touching, one from 1998 and the other from 2000; both arrests resolved with the State's entry of a *nolle prosequi.* (A0010, A1336-1349). The State filed its response on August 13, 2024. (A0010, A1361-76). After a hearing and supplemental briefing, the Superior Court denied Mitchell's motion in a written opinion issued on February 5, 2026. (A0013, A1520-33). One week later, the court sentenced Mitchell to a life term of incarceration plus 50 years. (A1571-72). Mitchell has appealed. This is the State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is denied. Because Mitchell did not raise this claim in the Superior Court, its review is barred by Delaware Supreme Court Rule 8 unless Mitchell can demonstrate plain error, which is not present here. Delaware law prohibits granting immunity from a prosecution for perjury. In this case, the immunity agreement did not protect Matthews from such a prosecution. Rather, it was a standard agreement that immunized Matthews for her actions and statements related to Tickles' murder and the police investigation. Nor was the agreement prospective. It did not immunize Matthews against a prosecution for perjury based on her testimony.

II. Appellant's argument is denied. The Superior Court did not abuse its discretion when it denied Mitchell's Motion for a New Trial. Juror No. 6's response to Question 17 regarding prior arrest(s) was not intentionally deceptive and did not result in depriving Mitchell of a fair trial.

STATEMENT OF FACTS

On May 19, 2021, WPD Cpl. Alan Hribel responded to a shooting in the 2300 block of Carter Street in Wilmington. (A0774-75). Upon arrival, Hribel observed approximately 30 people in the street and sidewalk area and then saw the victim, later identified as Dmajah Tickles, lying in the street. (A0775.) Tickles had suffered an apparent gunshot wound to his upper left chest. (A0777). That wound proved fatal. (A0371).

On the same day, Domenico Decicco was delivering pizzas in Wilmington. (A0295). As he was driving to a delivery on Carter Street, Decicco noticed a small Jeep SUV—he believed a Jeep Liberty—driving very fast. (A0299). Because he was concerned the vehicle might not stop at a stop sign and could hit him, he waited and allowed it to proceed ahead of him. (A0299). Decicco parked on the right side of the street, partly on the sidewalk, and called the customer to come outside. (A0300). Decicco got out of his car, handed over the food, and briefly spoke with the customer. (A0300). He later saw the same Jeep return and stop near his vehicle. (A0299). Decicco then heard gunshots coming from the left side of his car. (A0300). He did not see the driver, however. (A0301). After the shooting, the Jeep proceeded away, pausing briefly at a stop sign before leaving area. (A0300).

Maurice Plummer testified that he was familiar with the 2300 block of Carter Street because he had friends who lived in that area. (A303-04). In May 2021, he

was visiting friends in the area when a vehicle he described as an SUV pulled up near a corner while he was on 24th Street between Carter Street and Lamotte Street. (A0306). Plummer testified that he heard Dmajah Tickeles, whom he knew by the nickname "ManMan," in a verbal exchange with the person inside the SUV. Plummer and Tickles then walked from 24th Street onto Carter Street, with Tickles initially beside Plummer and then moving in front of him. (A0308). Plummer, who was pushing a bicycle, stopped near a van, leaned the bicycle on the van, and spoke with a group of individuals near the back of the vehicle. (A0308-09). Before Plummer reached the van, Tickles stepped into the street. (A0309). After Plummer reached the van, he heard what sounded like a single gunshot. Plummer then heard someone say, "He down." (A0309). He went into the street, where he saw Tickles lying on his back. (A0310). Plummer later observed what appeared to be a hole in Tickles' shirt in the chest area. (A0312).

Plummer was interviewed by Wilmington Police Detective Brandon Mosley in June 2021. (A0314). In his recorded statement, Plummer told Det. Mosley he observed a Jeep when he was on 24th Street and heard someone say, "Yo, spin the block. Keep it moving." (Court Exhibit 3). According to Plummer, Tickles alerted others to "watch that Jeep." (Court Exhibit 3). After Plummer and Tickles rounded the corner onto Carter Street, the Jeep pulled up, and Tickles turned toward the Jeep and was shot. (Court Exhibit 3). The shot came from the driver's side of the Jeep.

(Court Exhibit 3). Surveillance footage from the area captured a gold Jeep turning from Carter Street onto 24th Street. (State's Trial Exhibit 60).

Dijon Hunter grew up with Tickles and was with him on May 19, 2021. (A0427–28). Hunter testified that, while they were "coming around the block," onto Carter Street, he saw a gold truck driving down the street. (A0429). Hunter testified that, by the time he reached the front of his family's house on Carter Street, he heard two shots and saw Tickles "about to fall and hit the ground." (A0428-29). According to Hunter, there were two or three people in the car, and they were wearing masks. (A0446). One of the car's occupants was wearing a white shirt and had dreadlocks. (A0447). Hunter testified that, weeks before the shooting, he saw Mitchell in a silver car in the area and observed Mitchell make a gun gesture with his hand as the car passed. (A0450–51).

Det. Mosley interviewed Hunter shortly after the shooting. In his recorded statement, Hunter told Det. Mosley that the driver of the car was wearing a white shirt and mask and had dreadlocks with gold tips. (Court Exhibit 4). The last time Hunter had seen Mitchell walking on 24th Street, Mitchell had dreadlocks with gold tips. (Court Exhibit 4). Although Hunter could not identify the shooter, he identified Mitchell from a photographic line up. (Court Exhibit 4).

On May 26, 2021, Det. Mosley conducted a recorded interview with Raneesha Matthews. (Court Exhibit 5). Matthews told Det. Mosley she purchased a 2007 Jeep

Liberty on Facebook Marketplace in early May or late April 2021. (Court Exhibit 5). She said the Jeep usually "sit[s]," but that she had allowed one person to use it recently. (Court Exhibit 5). Matthews identified the person who used the car as "Tramont Murray." (Court Exhibit 5). She described him as a close friend and stated she knew his birthday was on Christmas and believed he was about 29 years old. (Court Exhibit 5). Matthews stated she had recently started talking to him as a friend. She denied knowing where Tramont lived and said he typically came to her or they would "ride around." (Court Exhibit 5).

Matthews told Det. Mosley that she had let Tramont use the Jeep approximately one week ago. (Court Exhibit 5). The car was returned to her later that day, around 11:00 p.m. to 12:00 a.m. (Court Exhibit 5). After returning the vehicle, Tramont told her she could not drive the car to work and wanted it kept parked. Matthews did not initially think much of his demand until she needed to go to work and Tramont said they were not driving the car, without explaining why. (Court Exhibit 5). Matthews became upset after Tramont told her she could not drive the Jeep because she worried about what might have happened while he used the car and suspected "something must have happened" involving it. (Court Exhibit 5).

At trial, Matthews testified that she knew Mitchell because they have children together. (A0619-20). She acknowledged owning a gold Jeep Liberty and loaning

it out on May 19, 2021. (A0621, A0626-27). However, Matthews testified that she had loaned the Jeep to someone named "Tyaire." (A0626-27). She said the Jeep was returned on the next day, but not by Tyaire directly; rather, it was parked in front of her home. (A0628). Matthews denied that Mitchell borrowed the Jeep on May 19, 2021. (A0629). In a May 20, 2021 text exchange between Matthews and Mitchell, Matthews asked Mitchell whether he "caught a wreck yesterday," and stated, "[I]f you did sum[sic] in my car that's fucked up." (States Trial Exhibit 87). When asked about why she told police that a person named "Tramont" had the car on May 19, Matthews stated his name was the only one that came to mind. (A0639-40). She told the jury that she let Tyaire use her car, and she loaned the car to others before and after she let Tyaire use it. (A0645-46). Matthews considered Tyaire her "brother," although she did not know his last name or his whereabouts. (A0645, A0650-51). She acknowledged that when she first told police and prosecutors about Tyaire was one month before Mitchell's trial. (A0648-49).

The police processed Matthews' Jeep for fingerprints and DNA. (A0781–A0782). DNA analysis of a swab taken from the Jeep's rearview mirror revealed a single source DNA profile for Tramont Mitchell. (A0841). No other DNA was found on the rearview mirror.

Jethroe Tickles, Dmajah Tickles' father, testified that he and his son were familiar with, and would frequent, the 2300 block of Carter Street. (A0524-25). He

did not know Mitchell personally, but knew of him, and he had one conversation with Mitchell approximately two to three weeks before his son's death. (A0524-25). The interaction occurred on the 2400 block of Lamotte Street, which he described as a block up from Carter Street. (A0524–25). When Tickles arrived, there were a few people around, and his son was in the middle of an argument or dispute. (A0527). Tickles testified that he and his son then walked away and the incident ended without a physical altercation while he was present. (A0526-28). Dmajah told him that he and Mitchell had been arguing over a female. (A0527). Tickles testified that, around the time of Dmajah's death, he was aware his son had met a woman he identified as "Jas," whom he described as the woman his son was dating. (A0544-48, A0554–55).

Sahliek Booker knew Dmajah Tickles and described Tickles as his best friend. (A0604). Det. Mosley interviewed Booker seven months after the shooting. (Court Exhibit 5). During the interview, Booker stated that Tickles had dated a woman named "Jenna." (Court Exhibit 5). Booker was present on occasions when Jenna's "baby dad," "Tramont," would "ride through the block" and slow down and stare and smirk at Tickles. (Court Exhibit 5). This would happen two times each week. (Court Exhibit 5). Booker said Mitchell and a person named "Beans" looked exactly alike. (Court Exhibit 5). At trial, Booker testified that he did not want to be there. (A0610). He testified that Tickles was dating a woman named "Jen" or "Jenna"

(A0604–05) and that Beans was one of Jenna's "baby dads." (A0613). Booker stated that Mitchell and Beans looked exactly alike, and he was not sure whether the person he saw driving by was Mitchell or Beans. (A0612.) Beans was later identified as Joshua Bailey (A0609), who was being monitored by the Department of Correction on home confinement when Mitchell shot Tickles. (A1123). DOC Home Confinement records showed that Bailey was in his home at the time of the shooting. (State's Trial Exhibit 103).

On May 26, 2021, Det. Mosley conducted a recorded audio interview of Raneesha Matthews' mother, Mignon Matthews. (Court Exhibit 8). Mignon told Det. Mosley that one to two weeks prior to the interview, Raneesha had loaned her Jeep to a person named "Mo," whom she had been dating for a couple of months. (Court Exhibit 8). "Mo" had been to Mignon's house once or twice and may have lived in Newark. (Court Exhibit 8). At that time, Mignon said she knew nothing more about "Mo." (Court Exhibit 8).

Two days later, Det. Mosley interviewed Mignon again. (Court Exhibit 9). During that interview, Det. Mosley showed Mignon a photo of Mitchell, and she identified him as "Mo." (Court Exhibit 9). When asked who the father of Raneesha's child was, Mignon stated Raneesha told her the father of the child was incarcerated. (Court Exhibit 9). However, Det. Mosley brought to her attention a baby shower flyer for Raneesha and Mitchell (State's Trial Exhibit 95) that

contained a photograph of those two individuals. (Court Exhibit 9). Mignon acknowledged that the photo depicted Raneesha and "Mo," who Raneesha called "Mont." (Court Exhibit 9).

At trial, Mignon testified there were multiple occasions when Raneesha did not have access to the Jeep. (A0870–71). According to Mignon, during one such occasion, Raneesha reported that she and Mitchell were arguing because Raneesha had lent the vehicle out. (A0877–78). Raneesha had been at Mignon's house and left in a Lyft around 6:30 to 7:00 p.m. (A0878). Mitchell wanted to use the vehicle, but it was not in the parking lot; an argument ensued. *Id.* Raneesha called her and was distraught, reporting she could not locate the vehicle and could not reach the person to whom she had lent it because that person's phone was off. (A0877–78). The Jeep was returned around 6:30 a.m. the following morning. (A0879).

After the State played Mignon's May 26, 2021 audio recorded interview for the jury, she testified that references in the statement to "Mo" concerned a person Raneesha was arguing with by phone and that Mignon understood "Mo" to be the name used for that person. (A0888-91). According to Mignon, the "Mo" she referred to in her statement was not Mitchell, who was known to her as "Tramont" or "Mont." (A0888-90). Mignon also testified that Raneesha said a person named "Tyaire," who was one of Raneesha's friends from high school, asked to use the car on the day of the shooting. (A0897-899). After the State played Mignon's May 28,

2021 statement to the jury, she acknowledged that Det. Mosley showed her a photograph during the interview and that she recognized and identified the person in the picture as Mitchell. (A0910). When shown the same photograph in court (State's Trial Exhibit 49), Matthews stated it looked different from the photo she recalled being shown because she knew Mitchell with hair, but she indicated it appeared to be him. (A0909).

When Raneesha and Mignon told Det. Mosley about "Tyaire," about two months prior to the trial, Det. Mosley undertook steps to identify him. (A1139). Det. Mosley learned about a person named Tyaire Anderson who lived on the west side of Wilmington. (A1140). He eventually spoke with Anderson's grandmother, who informed him that Anderson had been a shooting victim "several years ago" and was deceased. (A1141).

A few weeks after the shooting, Det. Mosley conducted a recorded interview of Jasmine Pruden. (Court Exhibit 11). She had dated Tickles for a few months prior to his death. (Court Exhibit 11). Before dating Tickles, Pruden was in a relationship with Mitchell and had a child with him. (Court Exhibit 11). According to Pruden, Mitchell and Pruden did not get along. (Court Exhibit 11). Mitchell would contact Pruden "nonstop" after the couple broke up. (Court Exhibit 11).

At trial, Pruden testified that she had been in a relationship with Tickles for approximately nine months before he was killed. (A1064). Pruden and Mitchell

have a child together and she had been in an on-and-off relationship with Mitchell. (A1065). According to Pruden, Mitchell and Tickles did not get along and had multiple arguments and disagreements, some over the phone and some in person. (A1066). Although she was in a relationship with Tickles, Pruden was in communication with Mitchell, and he had access to her phone. (A1065).

When police conducted an extraction of Tickles' phone, they discovered a direct message to Tickles from an Instagram account associated with Pruden. (A1016A). 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 ger back my manz. When I finally catch her alone you ain't never getting her back. (State's Trial Exhibit 79; A1016A).

The message was created on April 15, 2021. (A0960; State's Trial Exhibit 80). Tickles sent a response stating, "Okay weirdo," with a picture of himself and Pruden. (A0959-60; State's Trial Exhibit 81). Tickles followed up with another response shortly thereafter:

> U weird ass nigga that's why she don't want u fucking clown ass nigga dick up goofy kill yaself u lost nigga hang it up. You act like a little ass boy grow up my man she don't want u. U call off unknown numbers Nd all I c u my man fall back u goofy ass nigga. (A0961-62; State's Trial Exhibit 83).

Pruden testified that Mitchell had access to her phone but could not remember "when, where, [or] how." (A1075). When shown the above messages, Pruden had no recollection of seeing them or creating them. (A1099, A1111).

ARGUMENT

I. THE SUPERIOR COURT DID NOT COMMIT PLAIN ERROR BY PERMITTING RANEESHA MATTHEWS TO TESTIFY AFTER ENTERING INTO AN IMMUNITY AGREEMENT WITH THE STATE.

Question Presented

Whether the Superior Court committed plain error by permitting Raneesha Matthews to testify after entering into a standard immunity agreement that did not contemplate immunizing her from a prosecution for perjury based on her trial testimony.

Standard and Scope of Review

Delaware Supreme Court Rule 8 provides that "[o]nly questions fairly presented to the trial court may be presented for review; provided, however, that when the interests of justice so require, the Court may consider and determine any question not so presented."[1] The interests of justice exception to Rule 8 is applied "parsimoniously, and only where a trial court's failure to confront an issue 'is basic, serious and fundamental" in character and clearly results in "manifest injustice.'"[2] This Court has expressed concern over presenting arguments for the first time on

[1] Del. Supr. Ct. R. 8.

[2] *Sabree Environmental & Construction, Inc. v. Summit Dredging*, LLC, 2016 WL 5930270, at *1 (Del. Oct. 12, 2016) (quoting *Cassidy v. Cassidy*, 689 A.2d 1182, 1184–85 (Del. 1997)).

direct appeal, stating that "[w]e place great value on the assessment of issues by our trial courts, and it is not only unwise, but unfair and inefficient, to litigants and the development of the law itself, to allow parties to pop up new arguments on appeal they did not fully present below."[3] The reason for this is clear:

> Opponents should have a fair chance to address arguments at the trial court. It is prudent for the development of the law that appellate courts have the benefits that come with a full record and input from learned trial judges. Thus, fair presentation facilitates the process by which the application of rights in an individual case affects others in other cases and society in general.[4]

Because Mitchell did not fairly present his claim regarding Raneesha Matthews' immunity agreement to the Superior Court, he has deprived the State of an opportunity to litigate the matter and the Superior Court of an opportunity to address the issue. Rather than applying the Rule 8 bar to his claim, Mitchell ignores it.

Claims that were not presented to the trial court are reviewed for plain error.[5] "Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[6] This review is limited to material defects that are "apparent on the face

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[3] *DFC Global Corporation v. Muirfield Value Partners, L.P.,* 172 A.3d 346, 363 (Del. 2017).

[4] *Shawe v. Elting*, 157 A.3d 152, 169 (Del. 2017).

[5] *Clark v. Clark*, 47 A.3d 513, 518 (Del. 2012).

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

of the record; ... basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice."[7]

Merits of the Argument

For the first time on appeal, Mitchell argues that the Superior Court committed plain error "when it permitted Raneesha to testify with absolute immunity."[8] He contends the immunity agreement "insulat[ed] her from the consequences of perjury . . . ."[9] Mitchell misapprehends the terms of the immunity agreement, and his argument thus lacks merit.

Immunity

Under Delaware law, a court cannot grant a witness immunity from prosecution for perjury—immunity statutes expressly carve out perjury from any protection afforded to compelled testimony. Delaware's primary witness immunity statute, 11 *Del. C.* § 3506, governs the compulsion of testimony in criminal actions and grand jury investigations. Under the statute, upon motion of the Attorney General, the Superior Court may order a person to answer questions or produce

[7] *Id.*

[8] Op. Brf. at 35.

[9] Op. Brf. at 45.

evidence after notice and a hearing, notwithstanding the witness' Fifth Amendment privilege against self-incrimination.[10] Section 3506 provides, in part:

> (a) In any criminal action or in any investigation carried on by the grand jury, if a person refuses to answer any question or to produce evidence of any kind solely on the ground that the person may thereby be incriminated, the Superior Court, upon motion of the Attorney General, may order such person to answer the question or produce the evidence after notice to the witness and a hearing; provided, however, the Court shall not enter such order if the Court finds:
>
> > (1) That such person may be subjected to criminal prosecution relating to the same transaction or occurrence under the laws of the United States or any other state and that any such evidence so compelled could be used against the person in any such prosecution; or
> >
> > (2) Such order would otherwise be clearly contrary to the public interest.
>
> Such person, so ordered by the Court, shall comply with the Court order. After complying, such person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order, the person gave answer or produced evidence; provided that, but for this section, such person would have been privileged to withhold the answer given or the evidence produced.[11]

However, section 3506 contains an explicit and unambiguous exception:

> In no event, however, shall such person, acting pursuant to such order, 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

[10] 11 *Del. C.* § 3506.

[11] *Id.*

> 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.[12]

Immunity statutes are not incompatible with the values that underlie the Fifth Amendment privilege.[13] Rather, they seek a "rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify."[14] As the United States Supreme Court has recognized, immunity statutes have "become part of our constitutional fabric."[15]

The Superior Court Cannot Grant Perjury Immunity.

Immunity agreements between the State and a witness may validly condition the grant of immunity on the witness's truthfulness, with the understanding that the witness remains subject to prosecution for perjury if testimony is not truthful.[16] However, under Delaware law, the Superior Court cannot grant a witness immunity from perjury.[17] In *Worthy v. State*, this Court concluded that the Superior Court erred as a matter of law when the trial judge told a witness that "she could not be

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[12] *Id.*

[13] *Kastigar v. United States*, 406 U.S. 441, 445-46 (1972).

[14] *Id.*

[15] *Ullmann v. United States*, 350 U.S. 422, 438 (1956).

[16] *See Durham v. State,* 2016 WL 499348, at *3 (Del. Feb. 8, 2016) (stating "[a]ll witnesses swear to be truthful before testifying or face potential perjury charges").

[17] *See* 11 *Del. C.* § 3506; *Worthy v. State,* 120 A.3d 581 (Del. 2015).

prosecuted for any crime."[18] In rejecting the State's argument that the witness was not "free from the specter of possible perjury charges," the Court determined that "the undisputed trial record [demonstrated] the Superior Court told [the witness] that she could not be prosecuted for any crime."[19]

The Immunity Agreement In This Case Did Not Grant Raneesha Matthews Immunity From Prosecution For Perjury.

Although Mitchell did not object or otherwise raise an issue regarding the terms of Raneesha Matthews' immunity agreement, he now contends that "[t]he 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."[20] Mitchell is wrong.

Prior to Matthews testimony, the parties alerted the trial judge to a potential issue:

> DEFENSE COUNSEL: [The prosecutor] and I both believe that there is a pretty likely possibility that she could incriminate herself as either hindering or perjure herself.
>
> * * * *

[18] *Worthy,* 120 A.3d at 586.

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

[20] Op. Brf. at 34.

> PROSECUTOR: 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.[21]

At that point, no agreement had been reached with regard to Matthews' immunity. Defense counsel represented the concerns of the parties to the trial judge. Mitchell's contentions notwithstanding, these concerns did not form the terms of the immunity agreement. As Mitchell acknowledges, he was not a party to the agreement, and he played no part in the drafting of the agreement or the setting of its terms. That was left to conflict counsel and the State. With the assistance of counsel, Matthews executed the agreement, which reads:

> ACKNOWLEDGEMENT OF TERMS OF USE IMMUNITY
>
> Raneesha Matthews will testify on March 12, 2024 in the case of 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.[22]

[21] A0559-60.

[22] A0660.

The agreement was signed by Matthews, the prosecutor, and conflict counsel. The immunity agreement was raised by Mitchell during his cross-examination of Matthews:

> DEFENSE COUNSEL: Prior to your testimony today, the State offered you what is called immunity –
>
> MATTHEWS: Uh-huh.
>
> DEFENSE COUNSEL: -- right? Is that a yes?
>
> MATTHEWS: Yes.
>
> DEFENSE COUNSEL: They made you an offer that any testimony you provide about any crimes that you admit to, they are not going to use your testimony to prosecute you –
>
> MATTHEWS: Right.
>
> DEFENSE COUNSEL: -- right? And that nothing in your testimony can be used in any prosecution for you based on your activity?
>
> MATTHEWS: Right.
>
> DEFENSE COUNSEL: And you reviewed that agreement with a defense attorney?
>
> MATTHEWS: Yes.
>
> DEFENSE COUNSEL: And that is Molly Dugan, who is sitting in the Gallery right there (indicating)?
>
> MATTHEWS: Right.
>
> DEFENSE COUNSEL: You reviewed that with Miss Dugan. And after reviewing it with Miss Dugan, you signed this document and accepted the State's immunity offer?

MATTHEWS: Yes.

DEFENSE COUNSEL: And is it your understanding that if you previously provided a false statement to the police, that if you admit it today, the State cannot prosecute you for previously providing a false statement to the police?

MATTHEWS: Yes.

DEFENSE COUNSEL: Did you understand that question?

MATTHEWS: Yes.

DEFENSE COUNSEL: So to simplify it, if you previously lied to the police –

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: -- the State says if you admit any lie that you told the police today –

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: -- we won't prosecute you for it?

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: Is this document that you signed, which I think is Court Exhibit 7 -- is that right? Court Exhibit 7. Court Exhibit 6. The immunity document that you signed, is that part of why, today, you feel comfortable admitting that it was Tyaire that you lent your vehicle to?

MATTHEWS: No. Um, that was already mentioned. Before this court date today, actually.

DEFENSE COUNSEL: So you told the State prior to today –

MATTHEWS: Yes.

DEFENSE COUNSEL: -- that Tyaire is the individual who you provided –

MATTHEWS: Yes.

DEFENSE COUNSEL: -- you provided the car to?

MATTHEWS: Yes.

DEFENSE COUNSEL: Do you recall how long ago you told them that?
MATTHEWS: Um, this was -- when was that? Um -- I –

DEFENSE COUNSEL: Let me ask it this way. Was it within the past month?

MATTHEWS: Yes.

DEFENSE COUNSEL: All right. And who was present at that meeting when you told them that Tyaire is the individual that you gave the car to?

MATTHEWS: Um, Mr. Mosley. This guy (indicating).

DEFENSE COUNSEL: Mr. Rosen?

MATTHEWS: Mr. Rosen.

DEFENSE COUNSEL: Okay.

MATTHEWS: And I think –

DEFENSE COUNSEL: And Mr. Petrucci?

MATTHEWS: Yeah. I think all of three them, yeah.

DEFENSE COUNSEL: So all three gentlemen sitting at the State's table were present when you told them at some point in the last month that Tyaire is the individual you lent your car to?

MATTHEWS: Yes.

DEFENSE COUNSEL: And the immunity offer was made to you today?

MATTHEWS: Today. Uh-huh.

DEFENSE COUNSEL: Was the immunity offer discussed prior to today?

MATTHEWS: No, not at all. I didn't have an attorney.

DEFENSE COUNSEL: And I know you described your relationship with Mr. Mitchell as on-again, off-again?

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: You are on right now?

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: That is a yes?

MATTHEWS: Yes.

DEFENSE COUNSEL: Okay. Because you are in a relationship with Mr. Mitchell –

MATTHEWS: Uh-huh.

DEFENSE COUNSEL: -- would you lie under oath to protect him?

MATTHEWS: No. Me and Mr. Mitchell -- that's why I wouldn't call it a relationship. It's more like -- it's just we're just staying close because we got kids.

DEFENSE COUNSEL: Would you lie under oath to protect anybody?

MATTHEWS: No.[23]

[23] A0646-50.

Mitchell's cross-examination made no mention of a grant of immunity for perjury committed on the witness stand. Indeed, the focus of Mitchell's inquiry was Matthews' insulation from prosecution for statements she previously made to police—not her in-court testimony. In other words, the grant of immunity was retrospective. As Mitchell correctly notes, the prosecutor did not address the immunity agreement in closing. Mitchell, however, did:

> 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. that 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 the lie at that point?[24]

Mitchell's statements in closing intimated that Matthews received immunity from prosecution for perjury. His inaccurate representation of the immunity agreement did not change its terms. The agreement's terms are clear—the State would not prosecute Matthews "for the crimes she testified about and admitted liability for," or "for any criminal activity that was included in her testimony."[25] The agreement did

[24] A1308.

[25] A0660.

not state "anything she says on that witness stand cannot be used against her in any criminal proceeding," and there was no reference to perjury. Indeed, the only reference to "perjury" came from Mitchell in his closing. Simply saying the agreement immunized Matthews from prosecution for perjury does not make it so.

In support of his argument, Mitchell principally relies on this Court's decision in *Worthy v. State*[26] and a Connecticut appeals court case, *State v. Simmons*.[27] Both cases reinforce the prohibition against granting immunity from prosecution from perjury. However, both cases are factually distinguishable. In *Worthy*, the State called a witness who became argumentative while testifying and eventually asserted her Fifth Amendment right against self-incrimination.[28] The trial judge removed the jury during the witness's testimony, and the following exchange occurred:

> THE COURT: [Prosecutor], as to the potential of a, quote, false report and the witness's desire to rely on the Fifth Amendment of the Bill of Rights, is the State going to offer her immunity?
>
> [PROSECUTOR]: Yes, she has—she's not facing the potential for any criminal prosecution other than perjury.
>
> THE COURT: Well, that is—
>
> [PROSECUTOR]: I mean, that's—
>
> THE COURT: She could take the Fifth. Are you offering her full immunity?

[26] 120 A.3d 581 (Del. 2015).

[27] 205 A.3d 569 (Conn. App. 2019).

[28] *Worthy,* 120 A.3d at 583-84.

[PROSECUTOR]: Yes.

THE COURT: On everything?

[PROSECUTOR]: Yes.

THE COURT: Ma'am, what that means is, you have no Fifth Amendment right. The State will not prosecute you. You only have a Fifth Amendment right to not testify against yourself. Since the State is basically saying that whatever you say here today cannot ever be used against you for a crime, you will be required to testify. Do you understand that? It's not your personal choice. The State—

THE WITNESS: So I can't plead the Fifth?

THE COURT: You can't plead the Fifth because there's no possible crime you could commit. Even if you commit a crime by your testimony, the State has basically said that you cannot be prosecuted.

THE WITNESS: Okay.

THE COURT: All right.

[DEFENSE COUNSEL]: Your Honor, if I may, this is a little bit of new territory for me, but I would object in that it seems 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—

THE COURT: I don't think they've given her carte blanche to lie.

[DEFENSE COUNSEL]: They just said that they wouldn't prosecute her for perjury.

THE COURT: They said they wouldn't prosecute her for anything. All right? So the jury will decide, ultimately, as you said, the truth. All right? And if you want to bring this out on cross-examination that she

> has been offered immunity, whatever she says, you can do so. That goes to her bias, etcetera.[29]

On appeal, this Court determined the above exchange amounted to granting the witness immunity from perjury and thus violated 11 *Del. C.* § 3506.[30] The record supported the Court's conclusion—the prosecutor told the trial judge the only charge the witness was exposed to prosecution for was perjury, and the judge confirmed that the prosecutor was offering the witness "full immunity."[31]

But that is not what occurred here. The immunity agreement in this case was reduced to writing; its terms were clear; the witness availed herself of counsel, who reviewed and signed the agreement; Mitchell did not raise the issue at trial; and the agreement did not expressly or impliedly immunize Matthews from prosecution for perjury.

In *Simmons,* a prosecution witness invoked his privilege against self-incrimination on the advice of counsel.[32] After a discussion between the court, the prosecutor, and defense counsel regarding a potential grant of immunity for the witness, the prosecution agreed not to prosecute him for any crimes stemming from

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[29] *Id.* at 584.

[30] *Id.* at 585.

[31] *Id.* at 584.

[32] *Simmons*, 205 A.3d at 576.

his involvement in a shooting that was the subject of the trial.[33] The witness, through counsel, rejected the offer of immunity as insufficient.[34] The following day, the witness's attorney represented to the court that the parties had reached an immunity agreement:

> [Witness Counsel]: And so [the grant of immunity] includes transactional immunity to the events related to the—on the day of the shooting, directly and indirectly. It involves use immunity, so none of his words could be used directly against him in this or any other proceeding in state or federal court or anywhere else. It also includes derivative use so that his words can't be used to investigate and then come up with other evidence that can be used against him in any proceeding. There are other issues that we have talked about that I think need to be addressed.
>
> The Court: Go ahead.
>
> [Witness Counsel]: *One is that the immunity statute does not immunize a witness from committing perjury at the time*.
>
> The Court: *It does not*.
>
> [Witness Counsel]: And my understanding is that there is a tape recording or the prosecuting authority believes that it has a tape recording of my client saying something related to his testimony. So, I have concerns about exposure to perjury, and my understanding is that there has been an agreement that there wouldn't be *any perjury prosecution related to my client's testimony today*.
>
> [Prosecutor]: *That's correct*, Your Honor.
>
> The Court: Okay. Well, [counsel], I must compliment you. I have been in the criminal justice system for forty-two and one-half years. I've

[33] *Id*.

[34] *Id*.

> never heard of anybody getting that agreement. But it's an agreement the state made. That's their decision. Now, are we ready to testify?[35]

The witness had a failure of memory when he testified, and the trial judge excused the jury for the prosecutor to attempt to refresh the witness's recollection by playing a recording of a phone call:

> [Prosecutor]: The state will be offering [the recording of the telephone call] as a prior inconsistent statement by Mr. Harris. Now, if Mr. Harris—
>
> The Court: Well, are you sure that he does not have early onset dementia? Because for a young man, his memory's shot.
>
> [Prosecutor]: Well, this is the way you could refresh his memory, Your Honor.
>
> The Court: *Well, you're the one who agreed not to prosecute him for perjury*.
>
> [The Prosecutor]: I agree.
>
> The Court: *Which is probably against the public interest*, but I didn't step in.
>
> [Prosecutor]: There's a lot of issue with public interest in this case. "The Court: I must say *this amount of perjury* actually offends me."[36]

On appeal, the prosecution conceded that the immunity agreement was "improper," and the court determined "the trial court and the prosecutor either knew or should have known that the promise of immunity to [the witness] by the state was improper

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[35] *Simmons*, 205 A.3d at 577 (emphasis in original).

[36] *Id.* at 578 (emphasis in original).

and yet, the court permitted [the witness] to testify pursuant to an unlawful agreement that he could not be prosecuted for perjury even if he lied during his testimony."[37]

Yet that is not what occurred in the instant case. Unlike *Simmons*, the agreement here was not an express grant of immunity for perjury. The trial judge in *Simmons* was fully aware of the perjury immunity and nonetheless let the witness testify. Here, the trial judge was aware of the agreement (it was entered into evidence as a Court Exhibit), which made no reference to immunity for perjury—either expressly or impliedly. The trial judge did not comment upon the immunity agreement or question the parties. In other words, the court had no occasion to question the propriety of the agreement or consider whether to permit Matthews to testify as a witness. That is because the agreement was not one that insulated Matthews from prosecution for perjury.

That Mitchell did not object or otherwise raise any claim regarding the immunity agreement—which he now claims was inapposite to section 3506 and controlling Delaware caselaw and represents a material defect in the proceedings that is apparent on the face of the record—underscores the fact that the agreement did not expressly or impliedly contemplate immunizing Matthews from prosecution

[37] *Id.* at 580.

for perjury related to her courtroom testimony. In sum, Matthews' immunity agreement was in accord with 11 *Del. C.* § 3506 and controlling precedent. Neither the trial judge nor the parties had occasion to address its propriety. Accordingly, there was no plain error here.

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT DENIED MITCHELL'S MOTION FOR A NEW TRIAL BASED ON JUROR NO. 6'S INACCURATE ANSWER TO A *VOIR DIRE* QUESTION.

Question Presented

Whether the Superior Court abused its discretion when it denied Mitchell's Motion for a New Trial based on Juror No. 6's inadvertent failure to disclose a decades-old arrest in response to a *voir dire* question.

Standard and Scope of Review

This Court reviews the Superior Court's denial of a motion for new trial for an abuse of discretion.[38] Mitchell is not challenging the Superior Court's factual findings concerning Juror No. 6's credibility or impartiality.[39]

Merits of the Argument

"Both the Sixth Amendment to the United States Constitution and Article 1, § 7 of the Delaware Constitution guarantee a defendant in a criminal proceeding a right to a fair trial by an impartial jury."[40] *Voir dire* is the historic method used to identify bias in prospective jurors, and the right to challenge a juror either for cause

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[38] *Burroughs v. State*, 998 A.2d 445, 448-49 (Del. 2010) (citing *Taylor v. State*, 685 A.2d 349, 350 (Del. 1996); *Massey v. State*, 541 A.2d 1254, 1259 (Del.1988)

[39] Op. Brf. at 47.

[40] *Banther v. State*, 823 A.2d 467, 481 (Del. 2003); *see also Schwan v. State*, 65 A.3d 582, 587 (Del. 2013); *Knox v. State*, 29 A.3d 217, 223-34 (Del. 2011).

or peremptorily is a primary safeguard to the right to trial by an impartial jury.[41] A juror's deliberate non-disclosure of material information can, in certain circumstances, warrant a new trial.[42] However, in *Banther v. State*, this Court adopted the United States Supreme Court's reasoning in *McDonough Power Equipment, Inc. v. Greenwood*[43] that in order to be reversible error, the moving party must first "demonstrate that a juror failed to honestly answer a material question on *voir dire*, and then further show that a correct response would have provided a valid basis for a challenge for cause."[44]

In order to prevail, a movant must show that the juror gave *knowingly* false answers. That is, if the juror's answer was mistaken or inaccurate, but honestly so, then a new trial is not warranted.[45] This high threshold simply recognizes that perfection is not the standard:

> To invalidate the result of a [lengthy] trial because of a juror's mistaken, though honest, response to a question is to insist on something closer to

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[41] *See Banther*, 823 A.2d at 481; *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977).

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

[43] 464 U.S. 548 (1984).

[44] *Banther*, 823 A.2d at 48 (adopting *McDonough*).

[45] *Cooke v. State*, 97 A.3d 513, 555 (Del. 2014); *New v. Darrell*, 409 F. App'x 281 (11th Cir. 2011).; *see also United States v. Hodge*, 321 F.3d 429, 441 (3d Cir. 2003) ("Generally, we will not invalidate a jury's verdict because of a juror's mistaken, though honest, response at *voir dire*); *United States v. Saya*, 247 F.3d 929, 936 (9th Cir. 2001); *United States v. Tucker*, 243 F.3d 499 (8th Cir. 2001); *United States v. Cerrato-Reyes*, 176 F.3d 1253, 1259 (10th Cir. 1999).

perfection than our judicial system can be expected to give.[46]

During *voir dire* in Mitchell's case, the following question was asked of prospective jurors:

> 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?[47]

Juror No. 6 responded in the negative—an affirmative answer would have resulted in individual *voir dire*, which did not occur in Juror No. 6's case.[48]

After his trial, Mitchell learned that Juror No. 6 had been arrested for Offensive Touching on two occasions, once in 1998 and again in 2000—more than 20 years before Mitchell's trial.[49] At a post-trial hearing on the matter, Juror No. 6 initially testified that she recalled answering the above *voir dire* question accurately.[50] When the court asked Juror No. 6 about the 1998 and 2000 arrests, she had no recollection of either one, but believed she had been arrested in 1995 or 1996.[51] When the court provided more detail about the 1998 arrest, Juror No. 6

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[46] *McDonough*, 546 U.S. at 555.

[47] A0073.

[48] A0098.

[49] A1341-42.

[50] A1416.

[51] A1416-18.

acknowledged she had been arrested, and the case was dismissed.[52] When the court asked Juror No. 6 about her failure to disclose the 1998 arrest, she said, "Because of how long ago that it happened."[53] When the court inquired about her failure to disclose the 2000 arrest, Juror No. 6 responded, "Because I guess it was with my late husband. I didn't think about it. That's all. I wasn't trying to be deceitful or dishonest. I just didn't think about it."[54] The court asked Juror No. 6 whether either arrest would have made it difficult for her to have served as a juror or whether it engendered bias for or against either party; she responded in the negative.[55] The court ultimately determined: "(1) Juror No. 6 did not intentionally conceal that she had been charged in domestic incidents almost three decades before this trial; and (2) 'there is no credible proof that [Juror No. 6]'s impartiality was affected, adversely or otherwise ....'"[56]

In denying Mitchell's motion for a new trial, the Superior Court engaged in the two-part analysis set forth in *McDonough* and adopted by this Court in *Banther*. The court first determined that the *voir dire* question was "material," but Juror No.

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[52] A1419.

[53] A1419.

[54] A1421.

[55] A1420, A1422.

[56] *State v. Mitchell*, 2026 WL 314309, at *4 (Del. Super. Ct. Jan. 6, 2026) (quoting *State v. Cooke*, 2012 WL 3060956, at *11 (Del. Super. Ct. July 24, 2012).

6's inaccurate response to the question was not dishonest.[57] After concluding Juror No. 6's inaccurate response was not intentionally false, the court addressed whether an accurate answer the question would have provided a basis for Mitchell to strike Juror No. 6 for cause. The court held:

> Juror No. 6's accurate answer alone would not be a basis for a for-cause strike. There was also no indication that Juror No. 6 was prejudiced or biased due to her experiences in 1998 and 2000. Indeed, it was clear during the post-trial hearing that her arrests never came to mind, so they could have hardly affected her during the trial and deliberations. With no indication that Juror No. 6 was prejudiced or biased due to her experiences, there were no grounds for a for-cause strike. Nor is there any reason to believe that those experiences or her non-disclosure themselves demonstrate bias.[58]

The Superior Court did not abuse its discretion when it made the above determinations and denied Mitchell's Motion for a New Trial.

Mitchell does not appear to challenge the Superior Court's findings regarding Juror No. 6's reasons for failing to disclose her decades-old arrests. The court's conclusion is amply supported in the record.[59] Having determined that Juror No. 6's response to the *voir dire* question was not intentionally false, the Superior Court could have denied Mitchell's Motion for a New Trial on that basis alone—the court

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[57] *Mitchell*, 2026 WL 314309, at *5.

[58] *Id.* at *6 (citing *United States v. Bishop*, 264 F.3d 535, 555 (5th Cir. 2001)).

[59] A1419-22.

was not required to have addressed the second prong of the analysis.[60] This Court is likewise not obligated to address that prong.[61] In any event, the Superior Court correctly determined that had Juror No. 6 accurately answered the *voir dire* question, such answer would not have provided a basis to strike Juror No. 6 for cause. Again, Mitchell does not appear to challenge the Superior Court's determination that there was no basis for him to have struck Juror No. 6 for cause. "The purpose of jury *voir dire* is to uncover any bias or prejudice of potential jurors in order to insure the participation of an impartial jury sworn to render a verdict on the evidence presented and in conformity with the instructions of the court. . . . The trial judge has broad discretion in deciding whether prospective jurors should be excused for cause."[62] Here, Mitchell failed to demonstrate that Juror No. 6's affirmative answer demonstrated any bias or prejudice that could have served as a basis to strike her for cause.

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[60] *Cooke,* 97 A.3d at 555 .

[61] *See Id.* ("Because the Superior Court had a sufficient basis to conclude that Juror # 3's answers were not intentionally false, we need not reach the second prong of *McDonough*—the question of whether the record also supports the Superior Court's conclusion that Cooke would not have had a basis to strike Juror # 3 for cause even if she had more accurately answered the *voir dire* questions.").

[62] *Collingwood v. State*, 594 A.2d 502, 504 (Del. 1991) (citation omitted).

As he did below, Mitchell argues the second part of the *McDonough* analysis should not be limited to for-cause strikes. Rather, the analysis should be expanded to include peremptory challenges. He urges this Court to discard its precedent and follow a minority of jurisdictions in adopting a new rule. His argument is unavailing.

In support of his argument, Mitchell relies on two cases—one from Florida and one from South Carolina. These cases are neither case controlling nor persuasive.

Mitchell first cites, *Feagin v. State*,[63] a Florida case that applied that state's three-prong-test in *De La Rosa v. Zequeira*.[64] The test provides:

> First, the complaining party must establish that the information is relevant and material to jury service in the case. Second, that the juror concealed the information during questioning. Lastly, that the failure to disclose the information was not attributable to the complaining party's lack of diligence.[65]

Although the test does not specifically identify challenges to jurors, under Florida law, "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

[63] 307 So.3d 988 (Fla. App. 2 Dist. 2020).

[64] *De La Rosa v. Zequeira*, 659 So.2d 239 (Fla. 1995).

[65] *De La Rosa,* 659 So.2d at 241.

concealment is not revealed or discovered until after trial, can in certain circumstances justify the granting of a new trial."[66]

While the first and second prong of the analysis appear to resemble the first prong of *McDonough*, Florida's interpretation of the "concealment" language is antithetical to *McDonough* and this Court's requirement that a juror must have provided an *intentionally false* answer to a *voir dire* question. Under Florida law, there is no such requirement. As the court in *Feagin* explained:

> The second prong of the *De La Rosa* test turns on whether the alternate juror concealed the information during voir dire. In *Skiles v. Ryder Truck Lines, Inc.*, 267 So. 2d 379, 382 (Fla. 2d DCA 1972), this court stated:
>
> > [T]he fact that the false information was unintentional, and that there was no bad faith, does not affect the question, as the harm lies in the falsity of the information, regardless of the knowledge of its falsity on the part of the informant; while willful falsehood may intensify the wrong done, it is not essential to constitute the wrong; ... *when the fact appears that false information was given, and that it was relied upon, the right to a new trial follows as a matter of law.*[67]

That is not in accord with Delaware law, which correctly places the emphasis on the juror's response to the *voir dire* question and trial judge's assessment of the juror's honesty when explaining their response. As this Court explained in *Cooke*:

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[66] *Feagin* 307 So.3d at 993 (quoting *State v. McGough*, 536 So. 2d 1187, 1189 (Fla. App. 2 Dist. 1989) (internal quotation marks omitted).

[67] *Feagin*, 307 So.3d at 994–95 (citation omitted).

> 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. Where a juror *deliberately* fails to answer honestly a material question during *voir dire,* that dishonesty is considered to be, in itself, sufficient evidence of bias to require that the defendant be afforded a new trial. By contrast, to determine whether a new trial must be held in cases involving *inadvertent* non-disclosure by a juror, this Court has adopted the standard set by the United States Supreme Court in *McDonough.* ... The Superior Court's assessment of a juror's honesty during *voir dire* is entitled to special deference. This deference is based upon the judge's ability to assess the veracity and credibility of the potential juror.[68]

The Florida test makes no such distinction, eviscerating *McDonough* by presuming juror bias with no analysis. This Court should decline Mitchell's invitation to adopt Florida's approach.

The South Carolina approach tracks closer to *McDonough*, but it allows for consideration of whether the juror's response to a *voir dire* question would have been a material factor in exercising a party's peremptory challenge:

> When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the

[68] *Cooke*, 97 A.3d at 555 (citations and internal quotes omitted) (emphasis in original).

> other hand, where the failure to disclose is innocent, no such inference may be drawn.
>
> The first inquiry in the juror disqualification analysis is whether the juror intentionally concealed the information during *voir dire.* However, ... we have not precisely defined what constitutes an intentional concealment.
>
> We hold that intentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable. Unintentional concealment, on the other hand, occurs where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances.
>
> * * *
>
> Where a juror's response to *voir dire* amounts to an intentional concealment, the movant need only show that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. Where the juror's failure to disclose information is "without justification," i.e., intentional, the juror's bias will be inferred. Conversely, where the failure to disclose is innocent, no inference of bias can be drawn.[69]

South Carolina, like Florida, couches a juror's response in terms of "concealment." In South Carolina, a party must demonstrate "intentional concealment,"[70] which is a far cry from "intentionally false." As noted above, "intentional concealment occurs

[69] *Hassell v. City of Columbia*, 846 S.E.2d 373, 379–80 (S.C. App. 2020) (quoting *State v. Woods*, 550 S.E.2d 282, 284-85 (S.C. 2001)).

[70] *Id.*

when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable."[71] The South Carolina test does not address juror honesty, which is the emphasis under Delaware law. Similar to Florida, South Carolina presumes bias when a juror's failure disclose is information is without justification.[72] Such a presumption contradicts Delaware law. Nonetheless, Mitchell would have failed under the "intentional concealment" prong of the South Carolina test. Juror No. 6's explanation for her inaccurate response to the *voir dire* question was reasonable. Mitchell does not contend otherwise. Juror Number 6 was not thinking about her two prior arrests that occurred more than 20 years before her jury selection in Mitchell's case. The court found her explanation credible. Thus, Mitchell would not have gained the presumption of juror bias under South Carolina law.

Mitchell argues that the rule under *McDonough*, which requires a party to demonstrate that they could have struck a potential juror for cause, violates his due process right to peremptory challenges. He is wrong. "'There is nothing in the Constitution of the United States which requires the Congress [or the States] to grant peremptory challenges,' ... nonetheless the challenge is 'one of the most important

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[71] *Id.*

[72] *Id.*

of the rights secured to be accused....'"[73] Indeed, "the accused's right to challenge prospective jurors, either peremptorily or for cause, is one of the primary safeguards available to a defendant's effort to secure an impartial jury."[74] The requirement that a party demonstrate that they had a basis to exercise a for-cause strike does not run contrary to the principles underpinning the right to use peremptory challenges. *McDonough* recognizes this: "A trial represents an important investment of private and social resources, and it ill serves the important end of finality to wipe the slate clean simply to recreate the peremptory challenge process because counsel lacked an item of information which objectively he should have obtained from a juror on *voir dire* examination."[75]

In sum, the Superior Court did not abuse its discretion when it denied Mitchell's Motion for a New Trial. The court correctly applied the *McDonough* analysis adopted by this Court when it determined Juror No. 6's inaccurate response to the *voir dire* question was not intentionally false. Mitchell has not challenged that finding. Moreover, Mitchell failed to demonstrate that he had a basis to exercise a

[73] *McCoy v. State*, 112 A.3d 239, 254–55 (Del. 2015) (quoting *Swain v. Alabama,* 380 U.S. 202, 219 (1965) (internal citations omitted)).

[74] *Jackson* 374 A.2d at 2.

[75] *McDonough*, 464 U.S. at 555.

for-cause strike to remove Juror No. 6 from the panel. Mitchell likewise does not challenge that finding.

CONCLUSION

For the foregoing reasons, the State respectfully submits that this Court should affirm the judgment below.

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Dated: September 29, 2026

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

1. This brief complies with the typeface requirement of Rule 13(a)(i) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 9,766 words, which were counted by Microsoft Word.

Dated: September 29, 2026

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