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IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

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

APPELLANT'S REPLY 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

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ARGUMENT

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

In its Answering Brief, the State does not dispute that Delaware law prohibits immunizing a witness from prosecution for perjury committed during her testimony.[1] Instead, Appellee argues that Raneesha's Agreement did not provide such immunity because it protected her only from prosecution for criminal conduct occurring before she testified.[2] The State's argument therefore turns on the meaning of the Agreement. Ordinary principles of contract law govern agreements entered into by the State.[3] Those principles govern the interpretation of the Agreement here.

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[1] Ans. Br. at 16-18; *see also Worthy v. State*, 120 A.3d 581, 585-87 (Del. 2015) (holding a critical immunized witness "must be subject to the consequences for perjury faced by all other witnesses"); *Durham v. State*, 2016 WL 499348 at *3 (Del. Feb. 8, 2016) (recognizing that a witness granted immunity remains subject to prosecution for perjury if her testimony is untruthful).

[2] Ans. Br. at 24-30.

[3] *See generally Cole v. State*, 922 A.2d 354, 359 (Del. 2005) (recognizing that agreements between the State and criminal defendants are governed by contract principles); *see also United States v. Irvine*, 756 F.2d 708, 710 (9th Cir. 1985) (recognizing that cooperation-immunity agreements are contractual in nature and subject to contract law standards); *United States v. Black*, 776 F.2d 1321, 1326 (6th Cir. 1985) (same).

The Agreement contains two separate promises concerning Raneesha's testimony. First, the State agreed that it would "not use the testimony she will provide as evidence against her in criminal prosecutions for the crimes she testified about and admitted liability for."[4] The State then separately agreed that it would "not use the testimony of Raneesha Matthews to prosecute her for any criminal activity that was included in her testimony."[5] According to the State, both provisions provided the same essential protection: Raneesha could not be prosecuted for criminal conduct she had already committed and later disclosed while testifying.[6]

Delaware law requires a contract to be read as a whole, giving effect to each of its provisions and avoiding a construction that renders contractual language meaningless or mere surplusage.[7] Where competing interpretations are available, an interpretation that permits separate provisions to operate independently is

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[4] A0660.

[5] A0660.

[6] Ans. Br. at 24-25.

[7] *See Daniel v. Hawkins*, 289 A.3d 631, 660-61 (Del. 2023); *see also Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (explaining that courts must "read a contract as a whole" and give each provision effect so as not to render any portion "meaningless or illusory"); *Kuhn Constr., Inc. v. Diamond State Port Corp.*, 990 A.2d 393, 396-97 (Del. 2010) (requiring contractual provisions to be interpreted in a manner that gives effect to the agreement as a whole).

preferred over one that causes one provision to duplicate another.[8] Indeed, this Court recently rejected a "belt-and-suspenders" interpretation of separate contractual provisions because such a construction "cuts against our preference to avoid redundancy in interpreting contracts."[9]

The State's interpretation cannot be reconciled with those principles. The first provision already protected Raneesha from prosecution for "the crimes she testified about and admitted liability for."[10] If, as the State contends, the second provision likewise protected Raneesha only from prosecution for previously committed crimes discussed during her testimony, it accomplished nothing the first provision had not already accomplished. The second provision's materially different language confirms its distinct purpose. Unlike the first provision, the second is not limited to crimes for which Raneesha "admitted liability," but instead broadly prohibits the State from using her testimony to prosecute her for "any criminal activity that was included in her testimony."[11] Had the State intended to

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[8] *See Daniel*, 289 A.3d at 661 n.152 (rejecting a redundant "belt-and-suspenders" construction and citing the interpretive principle that, where one construction renders provisions duplicative while another leaves both with independent operation, the latter is preferred); *Osborn*, 991 A.2d at 1159 (requiring each contractual provision to be given effect).

[9] *Daniel*, 289 A.3d at 660-61.

[10] A0660.

[11] A0660.

impose the same limitation in the second provision, it plainly knew how to do so; it had used that precise limitation in the immediately preceding sentence. Reading the Agreement to give independent effect to both provisions therefore leads to a straightforward conclusion: the first protected Raneesha from prosecution for prior crimes she disclosed and admitted during her testimony, while the second protected her from prosecution for criminal activity contained within the testimony itself.

Perjury committed while testifying falls squarely within the second provision. Under Delaware law, a witness commits Perjury First Degree when she swears falsely and the false statement consists of testimony material to the proceeding.[12] Thus, if Raneesha knowingly testified falsely about who possessed the Jeep Liberty, the criminal activity constituting perjury occurred through—and was necessarily included within—the testimony itself. The State's contrary interpretation requires "any criminal activity that was included in her testimony" to mean only criminal activity committed before her testimony, even though the Agreement contains no such limitation. That interpretation cannot be reconciled

[12] *See* 11 *Del. C.* § 1223 (providing that a person commits Perjury First Degree when the person "swears falsely" and the false statement consists of testimony material to the proceeding); 11 *Del. C.* § 1224 (defining "swears falsely" as intentionally making a false statement, knowing it to be false or not believing it to be true, while giving testimony); 11 *Del. C.* § 1235(f) (defining "testimony" as an oral statement made under oath in a proceeding).

with either the language the State chose or the requirement that the Agreement's separate provisions be given independent effect.

The State also overlooks that it knows how to draft agreements preserving a witness's exposure to prosecution for perjury. In *Charbonneau v. State*, this Court recognized that the State's agreements with cooperating witnesses expressly conditioned their benefits upon providing truthful testimony.[13] Raneesha's Agreement contains no such condition.[14] Similarly, in *Durham*, the immunity agreement expressly preserved the State's ability to prosecute the witness for perjury if her testimony was untruthful.[15] Raneesha's Agreement contains no comparable exception.[16] Had the State intended to exclude perjury from the Agreement's protections, it plainly knew how to do so. Yet it chose not to include such language.

At minimum, the State's retrospective interpretation is not the only reasonable construction of the Agreement. A contract is ambiguous under Delaware law when its language is reasonably susceptible to more than one

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[13] 904 A.2d 295, 302 (Del. 2006).

[14] *See* A0660.

[15] 2016 WL 499348 at *3.

[16] *See* A0660.

interpretation.[17] Here, the State's construction requires the second provision to repeat protection already provided by the first and to contain a temporal limitation that does not appear in its text. Appellant's construction, by contrast, gives independent effect to both provisions and gives ordinary meaning to the State's promise not to prosecute Raneesha for "any criminal activity that was included in her testimony." Even if both interpretations are reasonable, the Agreement cannot be treated as unambiguously excluding protection from prosecution for perjury.

The circumstances surrounding the Agreement's execution further confirm that the second provision was not limited to previously committed crimes. Where contractual language is ambiguous, Delaware law requires consideration of extrinsic evidence bearing upon the parties' intent, including the circumstances existing when the agreement was made and the parties' communications leading to its execution.[18] Here, there is no uncertainty as to why the Agreement was created. Immediately before Raneesha testified, Appellant advised the Superior Court that

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[17] *See Osborn*, 991 A.2d at 1159-60 (holding that a contract is ambiguous when the Court may reasonably ascribe multiple and different interpretations to its language, while explaining that the parties' disagreement alone does not establish ambiguity); *Daniel*, 289 A.3d at 660 (concluding that competing reasonable readings of contractual language "at the very least, render the contract ambiguous").

[18] *See Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228, 1232-33 (Del. 1997); *GMG Cap. Invs., LLC v. Athenian Venture Partners I, L.P.*, 36 A.3d 776, 783 (Del. 2012).

either Raneesha had lied during the investigation or "she is lying now," and that there was a "pretty likely possibility" that her anticipated testimony could expose her to prosecution for Hindering Prosecution or Perjury.[19] The State agreed that Raneesha faced potential criminal exposure and advised the Court that it expected to have more information concerning its position after the lunch recess.[20] Conflict Counsel was then appointed to advise Raneesha regarding that exposure.[21]

Less than two hours later, the State returned with the Agreement.[22] Its language was expressly prospective: Raneesha "will testify," the State would not use "the testimony she will provide" against her, and it separately promised not to use her testimony to prosecute her for "any criminal activity that was included in her testimony."[23] The Agreement was admitted as a Court Exhibit immediately before Raneesha took the witness stand.[24] She then gave the very testimony that had prompted the concern over prospective perjury, repudiating her prior statement

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[19] A0558-60.

[20] A0559-60.

[21] A0567.

[22] A0567; A0595.

[23] A0660.

[24] A0595; A0660.

implicating Appellant and testifying that Tyaire Anderson, rather than Mr. Mitchell, possessed the Jeep Liberty.[25] The State's present interpretation thus requires the Court to conclude that an Agreement drafted in direct response to Raneesha's anticipated exposure for perjury, and expressly governing the testimony she was about to provide, nevertheless had no application to perjury committed through that testimony.

Delaware law confirms the distinction between lawful immunity for prior criminal conduct and unlawful immunity from the consequences of false testimony. Although Section 3506 governs court-ordered immunity, it provides that "[i]n no event" may a witness be exempt from prosecution for perjury or a false statement committed while providing immunized testimony.[26] In *Durham v. State*, the prosecution's immunity agreement expressly preserved the witness's exposure to prosecution for perjury if her testimony was untruthful, and this Court rejected a challenge to that language because it was taken directly from Section 3506.[27] Similarly, before the grant of immunity became impermissibly broad in *Worthy*, the prosecutor correctly represented that the witness was "not facing the

[25] A0627-29.

[26] 11 *Del. C.* § 3506(a).

[27] *Durham*, 2016 WL 499348 at *3.

potential for any criminal prosecution other than perjury."[28] Raneesha's Agreement contains no comparable reservation of the State's ability to prosecute perjury. Instead, it separately promises that her testimony will not be used to prosecute her for "any criminal activity" included within that testimony.[29]

The State's distinction of *Worthy* based on its express inclusion of perjury elevates form over substance.[30] Section 3506 does not prohibit only immunity agreements that use the word "perjury"; it provides that "[i]n no event" may an immunized witness be exempt from prosecution for perjury or a false statement committed while providing immunized testimony.[31] *Worthy* did not condition its holding upon the terminology used to confer immunity. This Court held that a critical prosecution witness "must be subject to the consequences for perjury faced by all other witnesses," describing that requirement as a "baseline requirement of justice in all cases, civil or criminal."[32] The dispositive question therefore is not whether Raneesha's Agreement expressly used the word "perjury," but whether the

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[28] *Worthy*, 120 A.3d at 584.

[29] A0660.

[30] Ans. Br. at 25-27.

[31] 11 *Del. C.* § 3506(a).

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

protection it actually provided encompassed perjury committed through her testimony. For the reasons discussed *supra*, it did.

The factual similarities between *Worthy* and this case undermine the State's attempt to distinguish it. In *Worthy*, a witness made statements before trial implicating the defendant, but recanted those statements when she testified.[33] The jury had to decide whether to believe the witness's earlier inculpatory statements or her contrary trial testimony.[34] Raneesha occupied a strikingly similar position here. Her prior statement provided the only evidence explaining how Appellant could have possessed the Jeep Liberty used during the homicide, but she repudiated that statement at trial and testified that Tyaire Anderson possessed the vehicle.[35] As in *Worthy*, the jury had to assess the credibility of a critical prosecution witness whose trial testimony contradicted the prior statements upon which the State relied.

The resulting prejudice is likewise strikingly similar. *Worthy* recognized that knowledge that the witness in question was immune from the consequences of lying under oath could have caused the jury to credit her earlier statements to

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[33] *Id*. at 583-84.

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

[35] A0648-52; A0670-75; A0699; A0708.

police, which incriminated Worthy, over her contrary trial testimony.[36] This Court emphasized that an "untainted testing of her credibility was indispensable" to the jury's assessment of those competing accounts.[37] The same credibility determination was central here. After Raneesha repudiated her prior statement, the State introduced that statement through Section 3507.[38] The State then relied upon it during closing argument to tell the jury it could be "certain" that Appellant possessed the Jeep Liberty on the night of the homicide.[39] Introducing Raneesha's prior statement while she testified under an Agreement insulating "any criminal activity" included in her testimony presents the same danger identified in *Worthy*.

The State also argues Appellant's failure to object "underscores" that the Agreement did not immunize Raneesha from perjury.[40] The record demonstrates precisely the opposite. During closing argument, defense counsel expressly told the jury that ordinarily Raneesha "could be prosecuted for perjury" if her testimony concerning Tyaire Anderson was false, but that the State had granted her immunity

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[36] *Worthy*, 120 A.3d at 586-87.

[37] *Id*. at 587.

[38] A0629-33.

[39] A1301.

[40] Ans. Br. at 30.

so that "anything she says on that witness stand cannot be used against her in any criminal proceeding."[41] Although Appellant did not object, he plainly understood the Agreement to protect Raneesha from the very perjury prosecution the State now insists remained available. The absence of an objection by Appellant establishes the applicable standard of review; it does not support the State's present interpretation of the Agreement.

The State faults Appellant for purportedly "ignoring" the applicable plain-error standard.[42] A cursory review of the Opening Brief swiftly undercuts any such contention. Appellant expressly acknowledged his failure to object; set forth the requirements of plain-error review; explained why the error was apparent on the face of the record and basic, serious, and fundamental in character; and demonstrated prejudice sufficient to jeopardize the fairness and integrity of the trial.[43] Appellant also relied upon *State v. Simmons*[44] out of Connecticut precisely because that court considered whether permitting a witness to testify with immunity from prosecution for perjury constituted plain error.[45] *Worthy*

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[41] A1308.

[42] Ans. Br. at 14.

[43] Op. Br. at 40-45.

[44] *State v. Simmons*, 205 A.3d 569, 580-82 (Conn. App. Ct. 2019).

[45] Op. Br. at 41-42.

establishes the underlying error; the remaining question is whether permitting Raneesha to testify pursuant to the unlawful Agreement satisfies Delaware's plain-error standard. It does.

Every fact necessary to recognize the error appeared on the face of the record. Before Raneesha testified, the Superior Court was specifically advised that her anticipated testimony exposed her to prosecution for perjury.[46] The Court knew counsel had been appointed to advise Raneesha concerning that exposure.[47] The resulting Agreement was then presented to the Court, admitted as a Court Exhibit, and immediately followed by Raneesha's testimony.[48] Recognition of the error required neither additional factual development nor an extension of Delaware law. Section 3506 expressly prohibited the immunity provided, while *Worthy* had already established that a critical prosecution witness must remain subject to the consequences of perjury faced by every other witness.[49]

The error was equally basic, serious, and fundamental in character. *Worthy* did not treat exposure to prosecution for perjury as a technical limitation upon the

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[46] A0558-60.

[47] A0567.

[48] A0595; A0660.

[49] 11 *Del. C.* § 3506(a); *Worthy*, 120 A.3d at 587.

permissible scope of immunity. Rather, this Court characterized a witness's obligation to testify truthfully under threat of perjury as a "baseline requirement of justice in all cases, civil or criminal," deeming the elimination of that requirement as to an important prosecution witness "fundamental."[50] *Simmons*, applying plain-error review, reached the same conclusion, recognizing that perjury laws play a "critical role in the search for truth at trial" and that immunity from perjury "violates public policy and undermines confidence in our judicial system."[51] Permitting a critical prosecution witness to testify free from a consequence this Court has expressly deemed a fundamental requirement of justice readily satisfies the character of error contemplated by plain-error review.

Finally, the State does not dispute Appellant's showing that the error was sufficiently prejudicial to satisfy plain-error review.[52] Although *Worthy* considered prejudice under harmless-error review, this Court has recognized that harmless and plain error are "distinct but analogous doctrines," with the critical difference that a defendant asserting plain error bears the burden of demonstrating prejudice.[53]

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

[51] *Simmons*, 205 A.3d at 580-82.

[52] *See generally Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived.").

[53] *Williams v. State*, 98 A.3d 917, 922 (Del. 2014).

Appellant has satisfied that burden. Raneesha's prior statement provided the only evidence explaining how Appellant could have possessed the Jeep Liberty used during the homicide.[54] After Raneesha testified that Tyaire Anderson, rather than Appellant, possessed the Jeep, the State introduced her prior statement pursuant to Section 3507 and relied upon it during closing argument to tell the jury it could be "certain" Appellant possessed the Jeep that night.[55] As *Worthy* recognized, where a critical witness gives trial testimony inconsistent with an earlier inculpatory statement, allowing that witness to testify without exposure to the consequences of perjury taints the jury's assessment of which account to believe.[56]

This case ultimately presents the precise danger identified in *Worthy*. The State anticipated that Raneesha would repudiate the only statement explaining how Appellant could have possessed the Jeep Liberty, believed her anticipated testimony could constitute perjury, and then entered into an agreement prohibiting the use of that testimony to prosecute "any criminal activity" included therein.[57] Raneesha testified pursuant to that Agreement, the State introduced the prior

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[54] *See* A0625-33; A0674-75; A0699; A0708.

[55] A0629-33; A1301.

[56] *Worthy*, 120 A.3d at 586-87.

[57] A0558-60; A0660.

statement she repudiated, and then urged the jury to reject her immunized testimony and accept her earlier inculpatory account.[58] Section 3506 prohibited removing the consequences of perjury from that credibility determination, and *Worthy* had already recognized exposure to those consequences as a fundamental requirement of justice.[59] Permitting Raneesha to testify pursuant to the unlawful Agreement was a material defect apparent on the face of the record, basic and fundamental in character, and clearly prejudicial to Appellant's substantial rights. The Superior Court committed plain error, and Appellant's convictions must be reversed.

[58] A0627-33; A1301.

[59] 11 *Del. C.* § 3506(a); *Worthy*, 120 A.3d at 587.

<u>CLAIM II</u>. 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.

The State frames the Superior Court's denial of Appellant's Motion for New Trial as subject to review for abuse of discretion.[60] Although that standard ordinarily governs the denial of a motion for new trial, legal conclusions are reviewed *de novo* for errors in formulating or applying legal precepts.[61] The question here is whether the Superior Court applied the correct legal standard in treating the absence of grounds for a challenge for cause as dispositive of Appellant's claim. That question is one of law, subject to *de novo* review.

The parties do not dispute that Question 17 was material, that Juror No. 6 answered it inaccurately, or that her prior prosecutions and their dispositions were not disclosed during *voir dire*. Nor does Appellant challenge the Superior Court's findings that Juror No. 6's nondisclosure was inadvertent, that there was no credible evidence her impartiality was affected, or that her criminal history would not have supported a challenge for cause. Appellant likewise acknowledges that

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[60] Ans. Br. at 32.

[61] *Waters v. State*, 242 A.3d 778, 782 (Del. 2020) (recognizing that, although the denial of a motion for new trial is ordinarily reviewed for abuse of discretion, legal conclusions are reviewed *de novo* for errors in formulating or applying legal precepts); *see also Lopez-Vazquez v. State*, 956 A.2d 1280, 1284-85 (Del. 2008).

these findings preclude relief under the traditional *McDonough* framework.[62] Although *Cooke* permits denial of relief under *McDonough* based solely upon the absence of intentional falsity, it did not resolve whether Delaware law separately affords relief for the deprivation of a peremptory challenge.[63] The question here is whether Delaware law nevertheless affords relief where material nondisclosure deprived a defendant of the opportunity to intelligently exercise a peremptory challenge. The State's position treats the absence of grounds for a challenge for cause as dispositive of whether the loss of a peremptory challenge is legally cognizable, despite the distinct purposes of those two challenges.

The distinction between challenges for cause and peremptory challenges is well established in Delaware law. In *Banther v. State*, this Court recognized that a defendant's right to challenge prospective jurors, "either peremptorily or for cause," constitutes one of the primary safeguards for securing an impartial jury.[64] The Court further explained that this right is "seriously impaired by a juror's denial

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[62] *Cooke v. State*, 97 A.3d 513, 554-55 (Del. 2014); *Schwan v. State*, 65 A.3d 582, 591 (Del. 2013); *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984).

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

[64] *Banther v. State*, 823 A.2d 467, 482 (Del. 2003) (quoting *Jackson v. State*, 374 A.2d 1, 2 (Del. 1977)).

or nondisclosure of material information in response to a *voir dire* question."[65] *Banther* did not limit that impairment to circumstances supporting a challenge for cause but expressly recognized that nondisclosure impairs the defendant's ability to exercise either form of challenge. The State's interpretation of *McDonough* fails to account for that distinction.

Hughes, *Riley*, and *Schwan* further demonstrate that peremptory challenges serve a purpose distinct from challenges for cause. In *Hughes*, this Court recognized that *voir dire* is "essential in permitting the intelligent use of peremptory challenges."[66] Similarly, *Riley* recognized that peremptory challenges are "an essential tool for eliminating potential jury bias" and must remain available to the parties within constitutional limits.[67] Most importantly, *Schwan* explained that when a prospective juror provides an inaccurate response during *voir dire* and subsequently serves on the jury, the defendant is deprived of the "historically important peremptory challenge right to remove a juror without showing cause."[68] Requiring a defendant to nevertheless establish grounds for a challenge for cause

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[65] *Id.*

[66] *Hughes v. State*, 490 A.2d 1034, 1044 (Del. 1985).

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

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

before recognizing an impairment of the right to peremptorily strike effectively eliminates the distinction between the two forms of challenge.

The State's position is also difficult to reconcile with *Knox v. State*.[69] There, the defendant learned after trial that a juror had been the victim of a crime in a separate, pending prosecution involving the same Deputy Attorney General who prosecuted her case.[70] Although concerned about the juror's impartiality, the Court separately addressed the lost opportunity to exercise a peremptory challenge.[71] Indeed, the Court explained that "[e]ven if the trial judge had questioned [the juror] and determined that [he] could serve, any rational defense counsel would be alerted to exercise a peremptory challenge to strike [him]," expressly recognizing the significance of information that would have prompted a peremptory challenge even where the prospective juror might otherwise have been qualified to serve.[72] The State's insistence that the absence of grounds for a challenge for cause necessarily defeats Appellant's claim fails to account for that reasoning.

[69] 29 A.3d 217 (Del. 2011).

[70] *Id.* at 219-20.

[71] *Id.* at 223-24.

[72] *Id.* at 224.

McCoy v. State confirms the significance of *Knox* and *Schwan* to the protection of peremptory challenges under Delaware law.[73] The *McCoy* Court expressly recognized that it had previously "overturned convictions where the *voir dire* process prevented the use of peremptory strikes," identifying *Schwan* and *Knox* as examples.[74] The Court discussed *Schwan* as a case in which the defendant lost the opportunity to exercise a peremptory challenge without showing cause, and *Knox* as a case in which undisclosed information would have prompted a peremptory challenge even if the juror could otherwise have served.[75] Thus, *McCoy* recognized that Delaware's protection of peremptory challenges extends beyond the question of whether a prospective juror could have been removed for cause.

The absence of a federal constitutional right to peremptory challenges does not diminish the significance of these decisions. *McCoy* recognized that states providing peremptory challenges retain discretion to determine the protections afforded to their exercise.[76] The United States Supreme Court has expressly

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[73] 112 A.3d 239 (Del. 2015).

[74] *Id.* at 257.

[75] *Id.* (discussing *Schwan*, 65 A.3d at 588, and *Knox*, 29 A.3d at 224).

[76] *McCoy*, 112 A.3d at 254-55.

recognized that state law governs both the exercise of peremptory challenges and the consequences of their erroneous denial.[77] Whether Delaware law affords relief for deprivation of the opportunity to intelligently exercise a peremptory challenge must be determined in light of Delaware precedent, including *Banther*, *Schwan*, *Knox*, and *McCoy*, rather than treating the for-cause requirement of *McDonough* as necessarily dispositive.

Although *McCoy* involved the trial court's erroneous refusal to honor a peremptory challenge actually exercised by the defendant, the injury alleged here arose before Appellant had any opportunity to exercise that right. Juror No. 6's inaccurate response to a material *voir dire* question deprived Appellant of the information necessary to make an informed decision concerning her suitability to serve. As *Banther* recognized, a juror's failure to disclose material information can itself seriously impair the exercise of peremptory challenges.[78] The State offers no persuasive reason why Delaware law should recognize a remedy when a trial court erroneously prevents the exercise of a peremptory challenge, but categorically deny relief when material nondisclosure prevents counsel from exercising that same right.

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[77] *Rivera v. Illinois*, 556 U.S. 148, 152, 157-58 (2009).

[78] *Banther*, 823 A.2d at 482.

Nor does *McCoy* suggest that the erroneous deprivation of a peremptory challenge is inconsequential merely because the juror ultimately seated was not subject to removal for cause. This Court recognized that the improper denial of a peremptory challenge forces a defendant to be judged by a jury that includes a juror objectionable to him.[79] Accordingly, *McCoy* held that where a defendant properly exercises a peremptory challenge and the trial court erroneously refuses to honor it, prejudice must be presumed and a new trial is required.[80]

The State's position also overlooks the remedial principle recognized in *McCoy*. After concluding that the erroneous denial of a valid peremptory challenge required a new trial, this Court explained that any other result would leave the defendant without a remedy for the deprivation of that right.[81] In doing so, the Court relied upon *Dorsey v. State*, which emphasized the importance of providing a remedy for the violation of a legally protected right.[82] The same concern arises here, where the State's proposed rule would leave a defendant

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[79] *McCoy*, 112 A.3d at 257-58 (citing *State v. Mootz*, 808 N.W.2d 207, 225 (Iowa 2012)).

[80] *Id*. at 258.

[81] *McCoy*, 112 A.3d at 258.

[82] *Id*. (citing *Dorsey v. State*, 761 A.2d 807, 821 (Del. 2000)).

without a remedy for the deprivation of a peremptory challenge unless the undisclosed information also established grounds for a challenge for cause.

The State's criticism of Appellant's reliance upon *Feagin v. State*[83] and *Hassell v. City of Columbia*[84] similarly misses the point. Appellant does not contend that Delaware must adopt Florida's treatment of inadvertent juror nondisclosure or South Carolina's definition of intentional concealment. Rather, those decisions are instructive because they recognize that information not disclosed during *voir dire* may be material to the exercise of a peremptory challenge even when it would not support a challenge for cause. In *Feagin*, the Florida court recognized that nondisclosure of information material to either form of challenge may, under appropriate circumstances, warrant a new trial.[85] Similarly, *Hassell* recognized that undisclosed information may warrant relief where it would have supported a challenge for cause or constituted a material factor in the exercise of a peremptory challenge.[86] That distinction is entirely consistent with the principles recognized by this Court in *Banther*, *Schwan*, *Knox*,

[83] 307 So. 3d 988 (Fla. Dist. Ct. App. 2020).

[84] 846 S.E.2d 373 (S.C. Ct. App. 2020).

[85] *Feagin*, 307 So. 3d at 993.

[86] *Hassell*, 846 S.E.2d at 378-80.

and *McCoy*. Whether the impairment of a peremptory challenge warrants a new trial presents a distinct question from whether the juror's conduct permits an inference of actual bias. The State's emphasis upon the absence of intentional dishonesty addresses the latter concern without resolving the former.

The State's reliance upon the age of Juror No. 6's prior arrests similarly fails to address the significance of those arrests to the exercise of a peremptory challenge.[87] The relevant information was not merely that Juror No. 6 had been arrested more than twenty years before Appellant's trial. Rather, the State had twice prosecuted her for criminal offenses and subsequently dismissed both cases. Knowledge of those prosecutions and their dispositions was information defense counsel was entitled to consider in determining whether Juror No. 6 should serve on the jury entrusted with deciding Mr. Mitchell's guilt. Whether those experiences actually rendered her biased, or whether she consciously recalled them during deliberations, does not resolve whether counsel would have exercised a peremptory challenge had the information been disclosed. Indeed, requiring Appellant to establish actual bias would effectively eliminate the distinction between peremptory challenges and challenges for cause that this Court has repeatedly recognized.

[87] Ans. Br. at 34-35.

The State also invokes *McDonough*'s concern that the interests of finality are not served by granting a new trial merely because counsel lacked information that "objectively he should have obtained from a juror on *voir dire* examination."[88] Here, Question 17 expressly asked whether prospective jurors had ever been accused of a criminal offense, and Juror No. 6 answered in the negative.[89] The question was material, the information was specifically sought, and nothing in her response alerted Appellant to the undisclosed prosecutions. Although *McDonough* likewise involved an inaccurate response to a *voir dire* question, the issue here is whether Delaware law independently affords a remedy for the resulting impairment of a peremptory challenge.

Appellant does not advocate a rule that would require a new trial whenever a juror inadvertently provides an inaccurate answer during *voir dire*. Rather, relief would only be appropriate where the undisclosed information was objectively material to the exercise of a peremptory challenge, the information was sought during *voir dire* but not disclosed, and the defendant establishes that its disclosure would have resulted in the exercise of a peremptory challenge. Such requirements

[88] *McDonough*, 464 U.S. at 555; Ans. Br. at 43.

[89] A0073; A0098.

would preserve the finality concerns recognized in *McDonough* while protecting the distinct purpose served by peremptory challenges.[90]

Those requirements are satisfied here. Question 17 was material, Juror No. 6 answered it inaccurately, and her disclosure of the two prosecutions and their dismissals would have resulted in Appellant exercising a peremptory challenge.[91] Juror No. 6 nevertheless served on the jury that convicted Mr. Mitchell. Appellant does not ask this Court to speculate about whether those prior prosecutions influenced her deliberations. The injury alleged is that her nondisclosure prevented the exercise of a peremptory challenge based upon information Appellant was entitled to consider before the jury was selected. The Superior Court's finding that there was no credible evidence Juror No. 6's impartiality was affected does not resolve that separate injury.

The State's proposed interpretation of *McDonough* would leave Appellant without a remedy for the deprivation of a right Delaware law expressly recognizes.

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[90] *See McDonough*, 464 U.S. at 555-56 (discussing the interests of finality and the circumstances warranting a new trial following an inaccurate *voir dire* response); *Banther*, 823 A.2d at 482 (recognizing that nondisclosure of material information seriously impairs the right to challenge prospective jurors).

[91] *State v. Mitchell*, 2026 WL 314309 at *5 (Del. Super. Ct. Jan. 6, 2026); A1441-42 (asserting that Appellant would have exercised a peremptory challenge had Juror No. 6 disclosed her criminal history); A1496-97 (counsel explaining why he would have exercised a peremptory challenge and confirming that he had previously struck prospective jurors for the same reason).

As this Court explained in *McCoy*, the erroneous denial of a peremptory challenge requires relief because the defendant has been forced to accept a juror whom he was entitled to remove.[92] Although the circumstances here differ, the practical consequence was the same: Juror No. 6 served on Mr. Mitchell's jury despite the existence of material information that would have resulted in her removal through a peremptory challenge. The Superior Court's finding that there was no credible evidence the juror's impartiality was affected does not restore the opportunity Appellant lost during jury selection. To hold otherwise would effectively make the availability of relief for the deprivation of a peremptory challenge depend upon whether the defendant could have established grounds for a challenge for cause, thereby denying the peremptory right any independent protection in cases involving inadvertent juror nondisclosure. The Superior Court's failure to recognize that distinct injury warrants reversal.

[92] *McCoy*, 112 A.3d at 257-58.

CONCLUSION

For the reasons stated herein and in his Opening Brief, 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

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