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Case Number 321,2023

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RAKIIM STRICKLAND,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 321, 2023
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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DATED: February 13, 2024

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NATURE AND STAGE OF THE PROCEEDINGS

The State indicted Rakiim Strickland, ("Strickland"), on 1 count of Possession of a Firearm By a Person Prohibited and 1 count of Possession of Ammunition by a Person Prohibited.[1] At a three-day jury trial, the State relied primarily on "shooting evidence" in the form of a 911 call and a surveillance video which a detective interpreted as portraying Strickland shooting a firearm. Strickland presented a witness, Taron Walker, who was present at the time of the purported shooting. He contradicted the detective's interpretation of the video. Walker has three prior firearm felony convictions. Defense counsel conceded to the introduction of one felony as it is a crime of dishonesty. However, over objection, the State was permitted to introduce the other two firearm felony convictions.[2]

At the end of trial, Strickland was convicted of both "person prohibited" counts.[3] Subsequently, the trial court granted the State's motion to declare Strickland a habitual offender. Then, on August 16, 2023, the court sentenced him to 35 years in prison followed by probation.[4]

This is Strickland's Opening Brief in support of a timely-filed appeal.

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[1] A1.
[2] Oral Decision Overruling Introduction Of Walker's Two Firearm Felony Convictions, attached as Ex. A.
[3] A3.
[4] August 16, 2023 Sentence Order, attached as Ex. B.

SUMMARY OF THE ARGUMENT

1. The State charged Strickland with Possession of a Firearm by a Person Prohibited and Possession of Ammunition by a Person Prohibited. He was not charged with possessing either of those items during the commission of a felony. Nor was he charged with committing any other offenses. No firearm was ever found. No forensic evidence linked Strickland to any ammunition. No eyewitness testified that Strickland was in possession of either a firearm or ammunition. And, Strickland provided no incriminating statements. So, the State tried its case as if it was a multiple felony shooting. It was permitted to do so without any guidance to the jury as to limits of consideration of the "shooting evidence" introduced by the State. Thus, the trial court's failure to *sua sponte* issue a limiting instruction regarding the purpose of the "shooting evidence" was plain error and Strickland's convictions must be reversed.

2. The trial court abused its discretion when it permitted the State to introduce evidence of Taron Walker's two firearm-related felony convictions when they did not involve dishonesty, the trial court did not perform the proper balancing test, the unfair prejudice of that evidence substantially outweighed its probative value and Walker contradicted Detective Barrow's interpretation of the State's key piece of evidence. Thus, Strickland's convictions must be reversed.

STATEMENT OF FACTS

On June 22, 2022, at about 6:18 p.m., a 911 call came into the Dover Police Department reporting that shots were fired in the area of the Capitol Green neighborhood.[5] According to the caller, someone with "dreads in his hair" was driving around the area in a white Nissan Altima with "t tags" and had been shooting a gun off in the air through an alley. Shortly thereafter, Corporal Figueroa, who was in his patrol vehicle, was stopped at the intersection of Route 13 and MLK Jr. Boulevard when he saw a small white passenger vehicle with one occupant turn right off of MLK Jr. Boulevard and headed south on Route 13.[6]

According to Figueroa, it was after he saw the white car turn that he received the 911 information from dispatch.[7] At trial, he could not recall the specific make and model of the car that was relayed.[8] Yet, even though, as he acknowledged, it is likely there were many white cars on the road that evening,[9] he decided to activate his emergency lights and chase the white car he just so happened to see.[10]

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[5] A7-11. State Trial Exhibit #2, 911 Call.
[6] A14-15.
[7] A12-13.
[8] A31.
[9] A27.
[10] A15.

It was raining heavily and the two cars were going fast. Figueroa claimed that, even though he lost control of his vehicle at one point, he maintained sight of the same white car for most of the pursuit.[11] He said that, eventually, that white car turned right onto River Road where, the officer believed, it lost control and may have struck a parked vehicle. It appeared to Figueroa that the car then gained control and continued on River Road[12] until it turned on to a small, paved alley that runs behind the homes on River Road. The officer lost sight of the car for a period of time, then, purportedly, he saw the same car turn left. After the officer turned left, he saw what he believed to be the same car rolling to a stop after having run into some bushes.[13]

Figueroa told a jury that he saw a black male with dreadlocks jump out of the stopped car. The officer believed the man was wearing a white tank top and either blue shorts or blue pants. The man began running along a 6 foot high fence. "[I]t was raining hard and it got dense, so [Figueroa] wasn't sure if he jumped over the fence or he continued straight into the woods."[14] He acknowledged that it is not unusual for individuals to run from police.[15]

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[11] A16.
[12] A17-19.
[13] A19-20, 28.
[14] A20-23.
[15] A29-30.

The officer checked the car and found no other occupants.[16] Other officers arrived, double checked car and set up a perimeter on River Road. Patrolman Ragon, who arrived after the suspect was gone, chose to search the car and found a backpack and wallet.[17] According to the officer, there was an insurance card and a driver's license inside the wallet. The cards both had Rakiim Strickland's name and address of 634 River Road on them. Ragon found no firearm or ammunition in or around the car. [18]

Sergeant Willson was also working that evening. He heard a transmission around 6:20 p.m. about a vehicle pursuit that ended on River Road alley that purportedly involved Strickland. Willson claimed to recognize the name and told the jury that he knew that Strickland lived at 634 River Road. So, he gathered up some other officers and arrived at the house about 5-10 minutes later and the officers surrounded the house.[19]

Upon orders to do so, Strickland's grandmother came out of the house. She told police that he was inside taking a shower. Strickland later came out of the house.[20] He appeared to have just come out of the shower and he was

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[16] A21-22.
[17] A23, 39. It appears containers in the car were searched, after the suspect was gone, without police obtaining a search warrant.
[18] A39-40.
[19] A44.
[20] A45.

wearing a red shirt.[21] Figueroa believed Strickland to be the individual who got out of the white car that stopped minutes earlier in the alley.

Even though Strickland was outside the house and in custody,[22] police decided to go into the house and conduct a "protective sweep" without a warrant. They found the shower was wet and there was steam in the bathroom.[23] Later, while waiting to conduct an authorized search, police learned which room in the home belonged to Strickland. A search of that room revealed a tank top along with muddy and wet black Nike sneakers.[24] However, police could not say where the mud came from and that it would not be unusual for items of clothing to be wet and shoes to be muddy on a rainy day.[25] Police also acknowledged that white t-shirts and black sneakers are common items of clothing.[26]

Neither Figueroa nor Willson ever found any evidence of firearms or ammunition in any location throughout the course of the investigation.[27] In fact, no firearm was ever recovered.

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[21] A46-47.
[22] A24-25, 26.
[23] A47.
[24] A47-48.
[25] A50.
[26] A49.
[27] A30.

Meanwhile, Detective Barrows, the Chief Investigation Officer, "contacted the original reporting person via phone, got a little additional information regarding where the incident allegedly occurred. Then [he] responded to that area, which was the alleyway behind 409/411 Kent Avenue and conducted a canvass of that area for casings and any signs of shots fired."[28] He found two deformed .300 Blackout casings in the alley behind 409/411 Kent Avenue.[29] The detective claimed these casings are associated with ammunition that can be fired from AR rifles or pistol platforms. He also explained that casings are ejected from a firearm after it is fired.[30] But, as Barrows acknowledged, the Capital Green area is a high crime area.[31] Further, the casings were never sent for DNA testing, and tests were negative for latent fingerprints.[32] Thus, there was no forensic evidence linking these casings to Strickland. And, significantly, the "original reporting person" did not testify as to the location of the shootings. In fact, she did not testify at all.

Later, police reviewed surveillance video of the common areas of Capital Green for the evening of June 22, 2022. The cameras capturing the

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[28] A51.
[29] A51-52, 59.
[30] A52.
[31] A29-30.
[32] A58.

videos are maintained by the Dover Housing Authority. [33] At trial, the State played one clip from a camera labeled Central Alley East and one from a camera labeled Central Alley West. Both clips are on one DVD.[34]

Detective Barrows narrated what he believed was depicted in certain portions of the clips taken from June 22, 2022 at around 6:22 p.m.[35] He was directed by the prosecutor as to which portions to highlight. Barrows interpreted the clip from the camera facing west as depicting a white Nissan Altima with a temporary registration tag heading east from River Road on an alley behind rowhomes on Kent Avenue. The officer told the jury that the video shows the car pull up next to the fence line near the back of the property at 409 Kent Road. According to Barrow, an individual, alleged by the State to be Strickland, exited that car holding what appeared to be an AR platform pistol or rifle.[36] Then, Barrow claimed, it appeared to him from the video that another individual was standing directly between the back of the house of 409 Kent Avenue and the cars parked in the driveway.[37] That individual was never identified by police.

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[33] A41-43.
[34] A53. State's Trial Exhibit #17, Surveillance Video clips from Central Valley East and Central Valley West.
[35] The officer explained that it is not unusual for the time stamp to be off by a few minutes from the actual time.
[36] A54.
[37] A55-56.

The detective went on to tell the jury that the camera facing east showed the Nissan Altima headed west just moments later with the driver's side facing the back of the property of 409/411 Kent Avenue. It appeared to him that the driver stuck an AR rifle or pistol out the driver's window and fired twice in the direction of 409/411 Kent Avenue, the driveway, and, thus, the individual who was standing in between the two locations.[38]

At trial, Strickland's life-long friend, Taron Walker, explained that he was with Strickland on June 22, 2022. Walker provided the jury with testimony that contradicted Barrow's interpretation of the video clips.[39] He explained that he lived at 411 Kent Avenue on June 22, 2022. [40] While he could not remember the exact time, he did recall that, on that date, he was on his property in the back of his house when Strickland pulled up in his car.[41] He explained that he and Strickland simply had a conversation, and that Strickland did not have or shoot a weapon.[42]

Walker told the jury that during their conversation, he remained standing on his property, behind his house, while Strickland remained seated in the driver's seat of his car. Strickland was about a half a car length away

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[38] A57.
[39] A60-62.
[40] A61, 68.
[41] A68-69.
[42] A60-61.

from Walker.[43] While Walker could not remember the make or model of the car or whether it had a temporary tag, he was able to tell the jury that Strickland's car was white.[44]

According to Walker, the two friends heard gunshots while they were talking.[45] As one might expect, Walker ducked and ran in the back door of his house.[46] Since he was facing in the opposite direction, he could only assume Strickland sped off from the sound of his car engine.[47] Walker did not see any shots being fired, he never saw any bullets or ammunition. He never saw any firearm or anyone who looked like they were firing a weapon.[48]

Shortly thereafter, Walker got in his car and drove off. He never called the police about the incident. [49]As he acknowledged to the jury, he was on probation at the time.[50] The jury was also permitted to hear that, in 2018, Walker was convicted in federal court of stealing firearms from a federally-licensed firearms dealer, conspiracy to steal firearms from a federally-licensed firearms dealer, and felon in possession of a firearm.

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[43] A60-62, 68-70
[44] A69, 70.
[45] A60-62.
[46] A60-62, 71.
[47] A61-62, 71.
[48] A61.
[49] A71-73.
[50] A62-63.

I. THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO, *SUA SPONTE*, ISSUE AN INSTRUCTION LIMITING THE JURY'S CONSIDERATION OF "SHOOTING EVIDENCE" TO THE EXPLICIT PURPOSE OF ESTABLISHING IDENTIFICATION AND POSSESSION AS THAT FAILURE WAS CLEARLY PREJUDICIAL TO STRICKLAND'S SUBSTANTIAL RIGHTS AND JEOPARDIZED THE FAIRNESS AND INTEGRITY OF THE TRIAL PROCESS.

Question Presented

Whether the trial court committed plain error when it failed to, *sua sponte* issue an instruction limiting the jury's consideration of "shooting evidence" to the explicit purpose of establishing possession and identification as that failure was clearly prejudicial to Strickland's substantial rights and jeopardized the fairness and integrity of the trial process.[51]

Standard and Scope of Review

This Court reviews the failure to issue a limiting instruction under D.R.E. 105 for plain error when the issue was not raised below.[52] To constitute plain error, the error complained of must be "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[53]

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[51] Del.Sup.Ct. Rule 8.
[52] *Bowen v. State*, 905 A.2d 746 (Del. 2006).
[53] *Id.* (quoting *Wainwright v. State,* 504 A.2d 1096, 1100 (Del.1986)).

Argument

The State charged Strickland with Possession of a Firearm by a Person Prohibited and Possession of Ammunition by a Person Prohibited. He was not charged with possessing either of those items during the commission of a felony. Nor was he charged with committing any other offenses. No firearm was ever found. No forensic evidence linked Strickland to any ammunition. No eyewitness testified that Strickland was in possession of either a firearm or ammunition. And, Strickland provided no incriminating statements. So, the State tried its case as if it was a multiple felony shooting. It was permitted to do so without any guidance to the jury as to limits of consideration of "shooting evidence" introduced by the State. Thus, the trial court's failure to *sua sponte* issue a limiting instruction regarding the purpose of the "shooting evidence" was plain error and Strickland's convictions must be reversed.

Prior Crime Evidence.

The 911 call contained an out-of-court statement that someone with "dreads in his hair" had been driving around the Capital Green area in a white Nissan Altima with "t tags" and was shooting a gun off in the air. The caller later purportedly provided police with the actual location of the shooting. However, she never came to court. So, Strickland had no opportunity to cross examine her on the veracity of her claims regarding any shootings.

The surveillance video, as interpreted by Det. Barrows, purportedly showed an individual in a white car stick an AR rifle or pistol out the driver's window of a white car in the alley behind 409/411 Kent Avenue.[54] However, Taron Walker testified that he was standing on the property behind the house at 411 Kent Avenue and that Strickland did not shoot a firearm. Walker also said he did not see anyone with a firearm or ammunition.

In the end, the bulk of the trial for crimes of possession focused on the issue of whether a shooting is depicted in the video and, if so, whether Strickland was the one who did the shooting. Of course, the jury had the video during deliberations and could review it as many times as it wanted.

A Limiting Instruction Was Required And Not Simply Discretionary.

Evidence of prior crimes or bad acts that are deemed admissible under D.R.E. 404 (b) generally require a limiting instruction when requested by the parties.[55] However, in *Weber v. State*, this Court made it clear that there are certain circumstances when it will be plain error for the trial court to fail to issue such an instruction even without a request by the parties. Typically, a 404 (b) limiting instruction does not need to be given "when evidence is introduced for a limited purpose and does not involve prior other crimes"

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[54]A57.

[55]See *Weber v. State*, 547 A.2d 948, 962 (Del. 1988).

unless requested by the parties. However, *Weber* clarified that "a Rule 404(b) limiting instruction ***is mandatory*** only when the evidence presented at trial consists of ***other past crimes***.[56]

In our case, the "shooting evidence" may have had independent logical relevance as it was material to an issue or ultimate fact in dispute in the case.[57] The State used that evidence to prove identity and actual possession of the firearm and ammunition. If the State proved Strickland fired the weapon, it *ipso facto* proved he possessed a firearm and ammunition. In that respect, our case is similar to *Weber*.

In *Weber*, the defendant was charged with, *inter alia*, intimidation and aggravated intimidation based upon threats to a prosecution witness.[58] In his threats, he said, "I killed before I'll kill again," and he claimed that he had previously bribed a judge. This Court noted that this prior criminal conduct, whether it occurred or not, was material as it was actually an element of the charges against him.

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[56] *Dixon v. May*, 2021 WL 4426898, at *6 (D. Del. Sept. 27, 2021) (citing *Weber*, 547 A.2d at 962-63). See *Baker v. State*, 1993 WL 557951*4-5 (Del. 1993); *Wooters v. State*, 1993 WL 169129*2 (Del. 1993).
[57] *Weber*, 547 A.2d at 955 (citing *Getz v. State,* 538 A.2d 726, 730 (Del. 1988)). See D.R.E. 404(b).
[58] *Weber*, 547 A.2d at 954-955.

But, there can be no doubt that inherent in the evidence at issue in both *Weber* and in our case is the "grave potential for misunderstanding on the part of the jury[.]"[59] Accordingly, in our case, just as in *Weber*, it was mandatory for the shooting evidence to "be accompanied by a cautionary instruction which fully and carefully explain[ed] to the jury the limited purpose for which that evidence ha[d] been admitted." [60]

The jury should have been informed that Strickland was not on trial for firing a weapon either indiscriminately throughout the neighboorhood or directly at one individual. The jury should also have been told that it was prohibited from using the "shooting evidence" as proof of bad character, criminal personality, or dangerousness. The jury should have been clearly told that the only purpose for which the evidence could be used, if believed, is to assist in determining identification and possession.[61]

Because the "shooting evidence" was not accompanied by a necessary instruction "for a proper understanding of the evidence by the jury and to assure a fair trial," the failure to give such an instruction is error.[62]

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[59] *Weber*, 547 A.2d at 956 (citing *Commonwealth v. Claypool,* 495 A.2d 176, 179 (Pa. 1985)).
[60] *Weber*, 547 A.2d at 956 (quoting *Claypool*, 495 A.2d at 179). *See Howard v. State*, 549 A.2d 692, 695 n.1 (Del. 1988).
[61] *Milligan v. State*, 761 A.2d 6, 10-11(Del. 2000).
[62] *Weber*, 547 A.2d at 956.

Plain Error.

The trial court's error was "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." The shooting evidence was the primary basis of the charges against Strickland. The 911 call referred to concerns that children in neighborhood were not safe. And, the caller was not subject to cross examination. The detective's interpretation of the surveillance video was disputed by an actual eyewitness. No weapon was found. There was no forensic evidence linking Strickland to the ammunition.

Further, the jury was provided with limiting instructions on other matters such as the proper purpose for considering Strickland's prior conviction to establish his prohibited status. This increases the chance that the jury was left with the impression that, as to the shooting evidence, they were free to infer what they wanted.

Accordingly, the failure to *sua sponte* issue a limiting instruction was plain error and Strickland's convictions must be reversed.

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT PERMITTED THE STATE TO INTRODUCE EVIDENCE OF TARON WALKER'S TWO FIREARM-RELATED FELONY CONVICTIONS THAT DID NOT INVOLVE DISHONESTY AS THE UNFAIR PREJUDICE OF THAT EVIDENCE SUBSTANTIALLY OUTWEIGHED ITS PROBATIVE VALUE.

Question Presented

Whether the trial court abused its discretion when it permitted the State to introduce evidence of Taron Walker's two firearm-related felony convictions when they did not involve dishonesty, the trial court did not perform the proper balancing test, the unfair prejudice of that evidence substantially outweighed its probative value and Walker contradicted Detective Barrow's interpretation of the State's key piece of evidence.[63]

Standard and Scope of Review

"The trial court's decision to admit evidence of prior felony convictions is subject to review in this Court for an abuse of discretion."[64]

Argument

To establish that Strickland possessed a firearm and ammunition, the State relied primarily on surveillance video and Det. Barrow's interpretation of certain clips of the video. According to the detective, the video showed

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[63] A64-66, 74-77.

[64] *Morris v. State*, 795 A.2d 653, 665 (Del. 2002), *holding modified by Baker v. State*, 906 A.2d 139 (Del. 2006).

Strickland shooting a firearm twice from the driver's seat in the direction of an individual standing behind the house at 409/411 Kent Avenue.[65] However, Taron Walker testified on Strickland's behalf and contradicted Barrow's interpretation.[66] He told the jury that he lived at 411 Kent Avenue on June 22, 2022.[67] While he could not remember the exact time, at some point on that date, he was standing behind his house having a conversation with Strickland who had pulled up in a white car.[68] During the conversation, shots rang out. Walker ducked and ran into the back of the house. Strickland drove off. His testimony contradicted a conclusion that Strickland possessed a firearm or ammunition.[69]

On direct examination, Walker acknowledged that he had been convicted of a crime.[70] After direct examination, the prosecutor made an application under D.R.E. 609:

> So as alluded to somewhat indirectly during the direct examination, Mr. Walker was convicted on September 12 of 2018, in the United States District Court for the District of Delaware with the following three offenses: stealing firearms from a federally-licensed firearms dealer, conspiracy to steal firearms from a federally-licensed

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[65] A53, 55-57. State's Trial Exhibit #17, Surveillance Video clips from Central Valley East and Central Valley West.
[66] A60-62.
[67] A61, 68.
[68] A68-69.
[69] A60-62, 68-71.
[70] A63.

> firearms dealer, and felon in possession of a firearm. Now, the first of those offenses under Rule 609(a)(2) because it involves theft of firearms is not subject to a balancing test because it did involve a crime of dishonesty, mainly theft. The other two offenses, to the extent that inchoate defense of conspiracy would be separately not a crime of dishonesty, both of them are subject to the balancing test under Rule 609(a)(1). The State's position is that the probative value does outweigh the prejudicial effect of admitting this testimony or this information. The State proposes to ask the witness about it, and if he admits to those convictions, simply to leave it at that without the necessity of introducing the record.[71]

Defense counsel agreed that the offense of stealing firearms from a federally-licensed firearms dealer was a crime of dishonesty and could be questioned about on cross examination. However, she argued that "the prejudicial effect of admitting the other two is --outweighs the probative value of the evidence, and I would ask that those two be excluded." [72] The judge then asked,

> All right. And to the extent that the Court would allow [the prosecutor] to ask Mr. Walker about these offenses, what is your position on the record that [the prosecutor] is in possession of with regard to the authenticity issue?[73]

Defense counsel responded, "[t]his is an authentic record. I would attest to its authenticity." To this, the court responded, "So you'll stipulate to the

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[71] A64-65.
[72] A66.
[73] A66-67.

authenticity? Is that the defense's position?" Defense counsel responded, "Yes, Your Honor.[74] The trial court appears to have incorrectly (or unclearly at best) paraphrased defense counsel's position before erroneously allowing cross examination on all three offenses:

> All right. The Court finds then based on at least what sounds like a partial concession by the defense that the probative value in light of the witness' testimony does outweigh any prejudicial effect doing the balancing test, at least for two of the three offenses, and the State would be permitted to ask Mr. Walker about those offenses from 2018.[75]

During cross examination, defense counsel objected when the prosecutor asked Walker about the three offenses:

> Defense Counsel: Yes, Your Honor. I object to bringing in all three of the offenses. As we discussed before, we could bring in the one that constituted a crime of dishonesty, but the other two were not crimes of dishonesty, and I would argue that those should not be brought in.
>
> ***
>
> Prosecutor: Your Honor, I have no objection to [Defense Counsel] because they're in the record, but I understand the Court's ruling that you engaged in the balancing test for the other two felonies and found that the probative

[74] A67.
[75] A67.

value outweighed the prejudicial effect.

The Court: That is the Court's ruling, [Defense Counsel], and [the prosecutor] can inquire about those three offenses.[76]

Pursuant to Delaware Rule of Evidence 609 (a), in order to attack the credibility of a witness,

> evidence that [he] has been convicted of a crime must be admitted but only if the crime (1) constituted a felony under the law under which [he] was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect or (2) involved dishonesty or false statement, regardless of the punishment.[77]

Here, defense counsel conceded that the offense of stealing firearms from a federally-licensed firearms dealer was admissible pursuant to D.R.E. 609 (a) (2) as a crime of dishonesty. However, as the prosecutor acknowledged, Walker's other two convictions, conspiracy to steal firearms from a federally-licensed firearms dealer, and felon in possession of a firearm, are not crimes of dishonesty. Thus, those two offenses were admissible under 609 (a) (1) ***only if*** the court found their probative value outweighed their prejudicial effect.

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[76] A74-77.

[77] See *Gregory v. State*, 616 A.2d 1198, 1203-1204 (Del. 1992); *Morris*, 795 A.2d at 665.

According to the trial judge, her initial finding was "based on at least what sounds like a partial concession by the defense that the probative value in light of the witness' testimony does outweigh any prejudicial effect doing the balancing test, at least for two of the three offenses[.]"[78] A reasonable reading of that decision is that the judge erroneously concluded that defense counsel made a partial concession that the probative value of the felonies of conspiracy to steal firearms from a federally-licensed firearms dealer and felon in possession of a firearm offenses outweighed their prejudicial effect. No such concession was made; thus, the judge abused her discretion if she based her decision on an erroneous premise and not on an independent balancing test required by 609 (a) (1).

Assuming, *arguendo*, the trial court did not base its decision on a conclusion that defense counsel conceded that the probative value of the offenses outweighed their prejudicial effect, it still abused its discretion when it allowed the introduction of all of the prior convictions. While the court was not required to issue a lengthy analysis,[79] it was required to "make factual determinations and supply a legal rationale"[80] to support its decision that the

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[78] A67.

[79] See *Hines v. State*, 248 A.3d 92, 101n.68 (Del. 2021) ("Although the trial court's analysis of the balancing test was brief, the court performed it as required under [DRE 609]").

[80] *Holden v. State*, 23 A.3d 843, 846 (Del. 2011).

"probative value in light of the witness' testimony does outweigh any prejudicial effect doing the balancing test, at least for two of the three offenses[.]"[81] It failed to do so in this case.

Walker was Strickland's only witness and he contested the State's claim that Strickland was in possession of a firearm or ammunition. The State was properly permitted to introduce evidence of Walker's conviction of stealing firearms from a federally-licensed firearms dealer for purposes of impeachment under 609 (a) (2). Thus, the State had the opportunity to tarnish his credibility with that offense. This, in turn, diminished the probative value of the convictions of conspiracy to steal firearms from a federally-licensed firearms dealer, and felon in possession of a firearm.[82] Accordingly, the piling on of those two additional firearm felonies was needlessly cumulative and did little more than "mak[e] it nearly impossible for any juror to believe [Walker]'s version of events."[83]

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[81] A67.

[82] *Sharif v. Picone*, 740 F.3d 263, 274 (3d Cir. 2014) (addressing F.R.E. 609). See *Robinson v. Banning*, 2021 WL 5631755, at *4 (E.D. Pa. Nov. 30, 2021) (finding, after conducting F.R.E. 609 (a) (1) balancing test, that defendant-witness' convictions for conspiracy, carrying a firearm without a license and possession of an instrument of crime were not admissible because "firearms convictions sa[id] little about his character for truthfulness").

[83] *Sharif,* 740 F.3d at 274.

Further, these were firearm convictions of Strickland's life-long friend in a firearm possession case where the State presented predominantly "shooting evidence." The additional past convictions of the gun offenses created a substantial risk that the jury would draw the character inference, forbidden by D.R.E. 404(b)," that Strickland was guilty by association with a witness who "*also* uses" guns.[84] Therefore, the trial court's abuse of discretion in failing to conduct a proper balancing test was reversable error.

[84] *Gregory*, 616 A.2d at 1203.

CONCLUSION

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

Respectfully submitted,

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