EFiled: Jun 11 2025 03:18PM EDT
Filing ID 76442404
Case Number 441,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMOTTE JOHNS, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)))))))))))	No. 441, 2024 On Appeal from the Superior Court of the State of Delaware

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

Carolyn S. Hake (Bar I.D. No. 3839)
Deputy Attorney General
Delaware Department of Justice
Carvel Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8500

Dated: June 11, 2025

TABLE OF CONTENTS

PAGE

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

In October 2022, a grand jury indicted Lamotte Johns for Drug Dealing (two counts), Possession of a Firearm by a Person Prohibited ("PFBPP"), Receiving Stolen Firearm, Possession of a Firearm During the Commission of a Felony ("PFDCF"), Possession of Ammunition by a Person Prohibited ("PABPP"), Possession of Drug Paraphernalia, and Conspiracy Second-Degree. (A1 at D.I. 1). On February 20, 2023, Johns moved to suppress evidence. (B1-23). The State filed an opposition. (B24-47). After argument, the Superior Court denied Johns's motion.[1]

In October 2023, the State reindicted Johns for the same charges. (A5 at D.I. 37). Johns subsequently moved to dismiss the indictment. (A6 at D.I. 44). On January 29, 2024, the Superior Court denied Johns's motion, granted the State's motion to amend one drug dealing count and the person prohibited charges, and granted Johns's motion to sever the person prohibited charges. (A7 at D.I. 53).

After a four-day trial, the jury found Johns guilty of two counts of Drug Dealing, PFDCF, Receiving a Stolen Firearm, and Possession of Drug Paraphernalia on April 4, 2024.[2] (A629-30). Immediately following the jury verdict, the same

[1] *State v. Johns*, 2023 WL 3750432 (Del. Super. Ct. May 31, 2023).
[2] The jury found Johns not guilty of Conspiracy Second-Degree. (A8 at D.I. 64).

jury convicted Johns of PFBPP and PABPP.[3] (A677-78). On October 11, 2024, the Superior Court sentenced Johns to an aggregate of seventeen years of incarceration, unsuspended, followed by decreasing levels of supervision. (A13 at D.I. 99).

On October 22, 2024, Johns filed a timely Notice of Appeal. On March 24, 2025, Johns filed his opening brief. This is the State's answering brief.

[3] Johns stipulated he was a person not legally permitted to possess a firearm or ammunition. (A647).

SUMMARY OF THE ARGUMENT

I. Denied. The Superior Court did not commit plain error by admitting alleged hearsay testimony provided by Detective Christoper Rosaio of the Wilmington Police Department ("WPD"). Trial counsel did not object to the testimony. Johns has not established that it is "clear" or "obvious" that such testimony constituted inadmissible hearsay and that its admission violated his confrontation rights. Nor has he established any error. The testimony was admissible under the Delaware Rules of Evidence ("D.R.E.") Rule 803(8), and its admission did not violate Johns's confrontation rights.

II. Denied. There was sufficient evidence in the affidavit of probable cause to support the issuance of the warrant to search Johns's residence at 514 West 6th Street. Investigators included sufficient facts within the four corners of the warrant for the issuing judge to form a reasonable belief that drugs and firearms would be found there.

III. Denied. Because Johns did not raise a Second Amendment facial or as-applied challenge below, this Court reviews his claims for plain error. The United States Supreme Court recently reiterated that longstanding prohibitions on felons possessing firearms are "presumptively lawful."[4] Johns has not presented any case

[4] *United States v. Rahimi*, 602 U.S. 680, 699 (2024) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)).

law from this Court casting doubt on that proposition. Johns has also failed to establish that it is "clear" or "obvious" that section 1448 is unconstitutional under the Second Amendment as-applied to someone with Johns's criminal history. Therefore, any error in Johns's person prohibited convictions cannot be "plain" so his facial and as-applied challenges fail.

Nor has Johns established any error. Johns's facial challenge fails because he cannot show that section 1448 is unconstitutional in all its applications. Johns also fails to show that the plain text of the Second Amendment covers his conduct and that section 1448 is inconsistent with the history and tradition of American firearm regulations. The Second Amendment does not entitle a felon like Johns – already convicted of drug-dealing and firearm violent felonies – to continue possessing firearms.

STATEMENT OF FACTS

Investigation

In September 2021, the WPD received two anonymous tips that Johns was selling marijuana from his residence at 514 West 6th Street. (B17). The first tipster claimed to have first-hand knowledge, as a customer of the barbershop that Johns ran out of his residence, and advised that Johns: (a) was selling marijuana illegally out of his residence; (b) was a felon; (c) possessed firearms there; and (d) had a young daughter who also lived there. (B17). The second tipster advised that Johns: (a) was selling marijuana and cocaine from his residence; (b) packaged the drugs in his bedroom; (c) stored the drugs in a grey tote box in his bedroom; (d) operated a silver Mercedes-Benz with Delaware registration; (e) possessed multiple firearms, including a silver firearm that he kept loaded in a bedroom at his residence; and (f) was a felon. (B17).

In July 2022, WPD received a third anonymous tip. (B17). In addition to providing Johns's name, date of birth, and cell phone number, the tipster, who claimed to have first-hand knowledge, explained:

> Johns is hiding firearms and selling large quantities of marijuana and other illegal substances out of 514 W. 6th Street…. Johns operates the above illegal transactions by means of his un-licensed barbershop, which he operates out of 514 W. 6th Street. In addition to illegal drugs being sold, Johns sells food platters and alcohol from his residence…. Johns hides his drugs in a bedroom closet on the 2nd floor, as well as hidden traps throughout the entire house, to include the basement…. Johns sells his drugs prepackaged, and primarily sells during the

> evenings and night time…. [They have] observed Johns possess a firearm, which he had on his waist…. Johns is a person prohibited from possessing a firearm due to a prior felony gun related charge.

(B17).

WPD officers subsequently confirmed Johns's address, cell phone number, and vehicle registration, and that he was prohibited from possessing a firearm in Delaware due to his prior convictions. (B17-18).

Officers also conducted surveillance on 514 West 6th Street during the first and second weeks of August 2022. During the first week of surveillance, officers observed a vehicle park in front of Johns's residence. (B18). Officers watched the driver exit the car, walk to the front door, and meet with a black male in the doorway before returning to his vehicle and driving away. (B18). When officers stopped the vehicle moments later for a moving violation, the driver was in possession of marijuana, which the driver revealed he had just purchased from the residence at 514 West 6th Street from a friend they knew from "cutting hair."[5] (B18).

During the next week, officers observed Johns exit the front door of 514 West 6th Street with a child before returning to the residence in a Mercedes, which he parked in front of the residence before going inside. (B18). Officers also observed a black male go inside Johns's residence for an hour before leaving in a car with

[5] The traffic stop and subsequent interaction were recorded by police body camera. The Superior Court reviewed the footage before deciding the motion to suppress. *Johns*, 2023 WL 3750432, at *1 n.1.

expired temporary registration tags. (B18, 19). Officers stopped the car and identified the driver as Charles Webster. (B18). Webster exhibited nervous behavior throughout the stop, including heavy, exaggerated breathing, and the inability to focus on police questions. (B19). When officers asked Webster to exit the vehicle, Webster refused and said he did not want to be searched.[6] (B19). After being informed he was under arrest, Webster sped off. (B19).

Officers subsequently applied for, and received, a daytime search warrant for Johns's home. (B21).

The Search

On August 17, 2022, at approximately 9:33 a.m., members of the WPD's Drug, Organized Crime, and VICE Unit arrived at 514 West 6th Street in Wilmington to execute the search warrant. (A136-38). The officers, in an unmarked police vehicle, first established surveillance of the residence, which they had confirmed Johns owned. (A138, A222). Officers observed Johns leave the residence with another man, later identified as Edward Hopkins, and drive away in a white Mercedes sedan operated by Johns. (A137-41). The officers followed the vehicle until it stopped in the Riverfront parking lot near Planet Fitness, at which time Johns and Hopkins were taken into custody and transported back to 514 West 6th Street. (A138).

[6] *Johns*, 2023 WL 3750432, at *3.

Using a key Johns provided, Detective Rosaio and other WPD officers entered and searched the house, which was captured on their body-worn cameras. (A138-41, A146-47, A161-64, A195, A222, A232-47). The residence had three stories and a basement; the first story appeared to be a barber shop; the second story contained a master bedroom and three additional bedrooms, which were numbered "1," "2," and "3"; and the third story contained two bedrooms. (A175-77; A459).

In the master bedroom, which was the only bedroom on the second floor that was not numbered, officers found a holstered black and silver Taurus .38 caliber firearm, loaded with five rounds of ammunition, and a large digital scale inside a shoebox on the bottom shelf of a nightstand beside the bed. (A149-51, A177-85, A222-24). The shoebox also contained a wallet with credit cards in Johns's name and a bank statement addressed to Johns at 514 West 6th Street. (A151-52, A182-85, A224). About three feet away, officers located foil bags and sandwich bags, commonly used to package and resell marijuana, and a small box containing $695 in cash, along with a business card addressed to Del Johnson. (A152-54, A186-97). Officers also found two small digital scales and a small amount of marijuana on top of a mini-refrigerator in the room, near a box containing Johns's passport. (A154-56, A193-94). In the bedroom's closet, officers found approximately 3,100 grams of marijuana packaged in various quantities in over 100 foil and plastic bags, empty

gallon-sized Ziploc bags, and 79 pills of methamphetamine.[7] (A157-58, A197-201, A229, A327-38). Near the closet, officers found documents addressed to Johns at 514 West 6th Street, including lease agreements between Johns, as the landlord, and Hopkins and an individual named Steven Brown, as tenants, a letter from the City of Wilmington dated less than a month before the search, and paperwork from Mercedes-Benz. (A158-60, A165-66, A170-72, A270).

In Bedroom "3," which did not contain a bed and appeared to be utilized as a storage room, officers located approximately 4,625 grams of marijuana packaged in Ziploc bags in various amounts inside six packages, including a duffel bag and a plastic tub. (A201-05, A244-46, A327-37). Officers also located approximately $14,000 in various denominations inside a green lunch box hanging on a coat hanger, and additional drug paraphernalia, including Ziploc foil bags. (A201-06, A246).

In a third-floor bedroom, officers found approximately 250 grams of leafy and liquid marijuana, additional drug paraphernalia, and a digital scale. (A206-07).

During the search, Johns, who was sitting next to Hopkins, spontaneously stated that Hopkins had nothing to do with this. (A271-76).

Officers also searched Johns's vehicle after obtaining his consent. (A207-08). They found another wallet belonging to Johns, containing $722.[8] (A208-09).

[7] The pills field-tested positive for MDNA. (A229-30, A251).
[8] Officers also found a cell phone, but returned it to Johns. (A220-21).

Officers subsequently arrested Johns and Hopkins. (A254). Detective Rosaio later conducted a wanted check on the firearm through the National Crime Information Center ("NCIC") and determined that the firearm was reported stolen in South Carolina. (A209). At trial, Delaware State Police Detective Michael Macauley concluded that the evidence was indicative of drug dealing. (A383-401; A414-18).

During the defense case, Johns called Miguel Feliciano, who testified that he leased a third-floor bedroom at 514 West 6th Street at the time of the search. (A458-61). He stated that he did not stay there every day and night and that others often stayed at the house, including Larus Brown, Hopkins, Steven Brown, and Ken Stokes.[9] (A458-64). Johns's father also testified that Johns stayed with him during parts of 2022, but did not stay with him every night. (A465-67).

At trial, Johns testified that he was a barber and ran a barbershop out of his property at 514 West 6th Street.[10] (A468, 472, 504-05). Johns also stated that he operated a catering company called Dell's Kitchen. (A468-69). He claimed that the cash found in the master bedroom was from his catering company (A469-70), and

[9] Feliciano testified that Stokes leased a bedroom on the second floor; Hopkins would share Feliciano's room and also use the other third-floor bedroom; Larus Brown, who was deceased, used to stay in a third-floor bedroom; and Steven Brown had stayed there in the past. (A458-63).

[10] On cross-examination, Johns clarified that he "wouldn't say [he] was running a barbershop, but I did cut hair for friends and family." (A504). He did not have a barber sign outside. (A504-05).

the cash in bedroom "3" was proceeds from cutting hair (A508). Johns stated that he took "payment in cash practically every day" as a barber and kept cash in the house because he was saving to purchase a food truck. (A470-71, A505).

Johns testified that, at the time of the search, he had three tenants, Stokes, Feliciano, and Larus Brown.[11] (A471-73). Although there was no bed in the room, Johns claimed that Stokes stayed in bedroom "3." (A473, A509-11). Johns testified that Hopkins worked full-time as a barber at the house and stayed at the house at least eight to ten days a month, in either Feliciano's room or in bedroom "1." (A471-73).

Johns claimed that the master bedroom was his office, which was always open and accessible. (A473). He testified that it was not his bedroom, although he used it to store his clothing. (A473-74, A479-80). He stated that there was marijuana in the room because he used it for medicinal purposes. (A474). Johns denied ever possessing any methamphetamine or other pills. (A478-79). Johns claimed that "large amounts" of the marijuana, including some marijuana in the master bedroom closet, and all the methamphetamine pills belonged to Larus Brown, who had died of an overdose about six weeks before the search, and that he had discovered them when he went to "clear his stuff out." (A479, A512-13, A520). Johns denied ever

[11] Johns testified that Steven Brown moved out about a month before the search. (A477).

engaging in drug dealing. (A480). Johns also denied that the firearm was his and stated he had never seen the gun before police discovered it. (A480-81, A516-17). He claimed that the firearm belonged to Stokes, who told him that he put it in the shoebox. (A481, A517).

During cross-examination, Johns admitted that Stokes was not renting bedroom "3" at the time of the search, but later contradicted himself and stated that Stokes was renting the room at the time and was sleeping on a "pull-out bed" or futon. (A509-11). Johns also changed his earlier testimony that the master bedroom was his office, claiming instead that the master bedroom was an office that he created and that he let the tenants use the computer there. (A509). Johns admitted that he did not have a medical marijuana card at the time of the search. (A518). Despite his testimony that he had never sold drugs or marijuana, Johns admitted that he had pled guilty to drug dealing marijuana in 2007. (A521).

I. THE SUPERIOR COURT DID NOT COMMIT PLAIN ERROR IN ADMITTING TESTIMONY FROM DETECTIVE ROSAIO ABOUT HIS NCIC SEARCH RESULTS.

Question Presented

Whether the Superior Court committed plain error in not excluding testimony from Detective Rosaio about his NCIC search results as inadmissible hearsay that violated Johns's confrontation rights.

Standard and Scope of Review

Because there was no defense objection to the police officer testifying about his findings from his NCIC search on the recovered firearm, Johns's claims that the result of the NCIC search was inadmissible hearsay evidence and violated his right to confrontation under the Sixth Amendment may now only be reviewed on appeal for plain error.[12]

Merits

At trial, the prosecutor asked Detective Rosaio, "Did you run any searches as it relates specifically to [the] firearm [found in Johns' master bedroom]?" (A209). Rosaio responded, "Yes. I conducted a wanted search on the firearm through NCIC,

[12] Supr. Ct. R. 8; *Johnson v. State*, 813 A.2d 161, 165 (Del. 2001).

which determined that it was reported stolen out of South Carolina."[13] (A209). There was no defense objection. (A209).

Relying on cases from other jurisdictions, Johns now argues for the first time that Rosaio's testimony about conducting the NCIC search was inadmissible hearsay that violated his rights under the Sixth Amendment Confrontation Clause. (Opening Br. 10-15). By not objecting to Rosaio's testimony about the NCIC search, Johns's belated appellate claims are waived and may now only be reviewed on appeal for plain error. Johns has not established any error, plain or otherwise.

Hearsay

D.R.E. 801(c) defines hearsay as a statement that the declarant did not make while testifying at trial that is offered to prove the truth of the matter asserted in the statement.[14] D.R.E. 802 states: "Hearsay is not admissible except as provided by law or by these Rules."[15] D.R.E. 803(8) provides a hearsay exception for "[r]ecords, reports, statements or data compilations, in any form, of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority

[13] The NCIC report was not introduced. (*See* A209). Rosaio's recital of his NCIC search is the only evidence that affirmatively showed the gun was stolen.
[14] D.R.E. 801(c).
[15] D.R.E. 802.

granted by law."[16] Specifically excluded from this exception, however, are: "(A) Investigative reports by police and other law-enforcement personnel; (B) investigative reports prepared by or for a government, a public office or an agency when offered by it in a case in which it is a party; (C) factual findings offered by the government in criminal cases; (D) factual findings resulting from special investigation of a particular complaint, case or incident; (E) any matter as to which the sources of information or other circumstances indicate lack of trustworthiness."[17]

Although this Court does not appear to have directly addressed the admissibility of information from NCIC, including details on stolen property,[18] Delaware courts have applied D.R.E. 803(8) to a variety of public records, including information contained in the Delaware Criminal Justice Information System ("DELJIS"), which this Court noted is "very similar" to the NCIC database at issue

[16] D.R.E. 803(8).
[17] Id.
[18] *See Ruffin v. State*, 131 A.3d 295, 303-04 (Del. 2015) (detective testified without objection that information that gun was stolen came from NCIC and only issue on appeal was whether ATF report admissible as public record under D.R.E. 803(8)).

here.[19] In *Hickson v. State*,[20] this Court held that information regarding a vehicle's registration contained in DELJIS, a statewide database of criminal records, was admissible under D.R.E. 803(8), explaining:

> D.R.E. 803(8) provides a hearsay exception for records, reports, statements, or data compilation in any form of a public agency recording activities or matters observed pursuant to duty imposed by law. DELJIS is a State agency charged, *inter alia*, with maintaining "an accurate and efficient criminal justice information system to meet the needs of criminal justice agencies of the State or any political subdivision thereof. Data reflecting the registration of all motor vehicles in the State is required to be maintained by the Division of Motor Vehicles of the Department of Public Safety pursuant to its duty to require such registration. Read in tandem, these statutes reflect a State-imposed duty to record motor vehicle registrations and the authorization to make such information available to law enforcement agencies. Accordingly, the disputed element of D.R.E. 803(8)-that of a public record maintained by legal requirement-is satisfied.
>
> Indeed, a foundation for admissibility may at times be predicated on judicial notice where the record is replete with circumstances demonstrating the trustworthiness of the documents. Moreover, police officers routinely use the DELJIS system in order to ascertain publicly stored information concerning motor vehicles, and the routine use of this public system renders it sufficiently trustworthy. Thus, the Superior Court was correct in ruling that the information Officer

---

[19] *See id.* (noting "information from the NCIC, such as details on stolen property, comes from a national database very similar to the DELJIS database discussed in *Hickson*"); *id.* (holding ATF report admissible under D.R.E. 803(8) as public record); *Hickson v. State*, 2003 WL 1857529, at *1 (Del. Apr. 7, 2003) (holding officer's testimony about information received by assessing DELJIS properly admitted as public record hearsay exception under D.R.E. 803(8)); *Trawick v. State*, 845 A.2d 505, 509-10 (Del. 2004) (holding certified court record of prior conviction properly admitted under D.R.E. 803(8)) as public record).

[20] *Hickson*, 2003 WL 1857529.

> Cassidy assessed through DELJIS qualified for admission under D.R.E. 803(8).[21]

Although a few jurisdictions have determined that the contents of NCIC reports do not fall within a hearsay exception (*see* Opening Br. 12-13), federal courts have held that NCIC reports are public records and reports admissible under F.R.E. 803(8),[22] and other states have determined that NCIC reports and testimony regarding information in the reports falls within the business-records exception to the hearsay rule.[23] For example, in *United States v. Enterline*, the Eighth Circuit examined the admissibility of a NCIC report showing that vehicles found on defendant's property had been reported stolen.[24] The Eighth Circuit held that the NCIC report was admissible as a public record under F.R.E. 803(8) because the

---

[21] *Id.* at *1 (cleaned up).

[22] *See United States v. Enterline*, 894 F.2d 287 (8th Cir. 1990). Although D.R.E. 803(8) tracks the corresponding Uniform Rule of Evidence, this Court has nevertheless looked to the federal courts for guidance and found F.R.E. 803(8) to be "didactic" to this Court's analysis of D.R.E. 803(8). *See Ruffin*, 131 A.3d at 300-01.

[23] *See Myler v. Commonwealth*, 2022 WL 10219764, at *4-5 (Va. Ct. App. Oct. 18, 2022) (concluding NCIC report properly admitted under business-records hearsay exception); *Cooper v. Commonwealth*, 680 S.E.2d 361, 368 (Va. Ct. App. 2009) (holding NCIC report confirming gun discovered in defendant's possession had been reported stolen admissible under business-records exception); *Frye v. Commonwealth*, 345 S.E.2d 267, 279-80 (Va. 1986) (upholding admission of NCIC report identifying defendant as escapee under business-records exception); *State v. Sneed*, 709 S.E.2d 455, 462 (N.C. Ct. App. 2011) (holding admission of NCIC printouts under business-records exception not plain error).

[24] *Enterline*, 894 F.2d at 289-91.

information contained in the NCIC report did not contain "contemporaneous observations by police officers at the scene of a crime, and thus present[ed] none of the dangers of unreliability that such a report presents."[25]

Where, as here, neither the United States Supreme Court or this Court have "definitively ruled" on the admissibility of a type of evidence, and other courts are divided, the trial court's failure to exclude the evidence "*sua sponte*, in the absence of any contemporaneous defense objection, [does] not constitute plain error."[26]

Nor did the Superior Court commit any error, plain or otherwise, in admitting Rosaio's testimony that information that the gun was stolen came from the NCIC. As this Court recognized in *Ruffin v. State*,[27] "[i]nformation from the NCIC, such as details on stolen property, comes from a national database very similar to the DELJIS database," which this Court found falls under D.R.E. 803(8)'s public records exception in *Hickson*.[28] Similarly, Rosaio's testimony that information that the gun was stolen came from the NCIC was properly admissible as a public records hearsay exception under D.R.E. 803(8). NCIC records are relied upon in many ways by law enforcement, including to perform criminal background checks and to learn details on stolen property.[29] They are not investigative reports by law enforcement

[25] Id.
[26] *Johnson*, 813 A.2d at 166.
[27] 131 A.3d 295.
[28] *Ruffin*, 131 A.3d at 304.
[29] *Id.*; *State v. Humble*, 2001 WL 1555939, at *3 (Del. C.P. June 20, 2001).

personnel or factual findings. Here, nothing in the record indicates that the evidence in question is untrustworthy.[30] Johns does not claim or offer any evidence that this NCIC report was inaccurate.

Confrontation Clause

The Confrontation Clause of the Sixth Amendment bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination."[31] The United States Supreme Court developed the "primary purpose" test to determine whether a statement qualifies as testimonial.[32] In *Michigan v. Bryant*, the United States Supreme Court held that when the primary purpose of a statement is not to create a record for trial, then it does not violate the Confrontation Clause.[33] When a statement is created as "an out-of-court substitute for trial testimony," then it falls under the auspices of the Confrontation Clause.[34] When that is not the primary purpose, the admissibility is controlled by the rules of evidence.[35]

Here, the admission of Rosaio's testimony regarding the NCIC record did not violate the Confrontation Clause. In *Melendez-Diaz v. Massachusetts*,[36] the United

---

[30] *See id.* ("NCIC report has more than minimum indicia of reliability.").
[31] *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004).
[32] *Michigan v. Bryant*, 562 U.S. 344, 359 (2011).
[33] *Id.* at 358-59.
[34] Id.
[35] *Id.*
[36] 557 U.S. 305 (2009).

States Supreme Court noted that "[b]usiness and public records are generally admissible absent confrontation not because they qualify under an exception to the hearsay rules, but because – having been created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial – they are not testimonial."[37] The relevance of information in NCIC does not automatically transform it into a testimonial statement.[38] Because it is admissible as a public record and Johns has not demonstrated that NCIC created it specifically to use at trial, it is not testimonial. Thus, the Superior Court did not commit plain error in admitting Rosaio's testimony.

[37] *Id.* at 324; *State v. Phillips*, 2015 WL 5168151, at *2 (Del. Super. Sept. 2, 2015) ("[I]t is undisputed that public records, such as judgments, are not themselves testimonial in nature and that these records do not fall within the prohibition established by the Supreme Court in *Crawford*.").
[38] *People v. Lopez*, 286 P.3d 469, 482 (Cal. 2012).

II. THERE WAS SUFFICIENT EVIDENCE CONTAINED IN THE AFFIDAVIT OF PROBABLE CAUSE TO SUPPORT THE ISSUANCE OF A SEARCH WARRANT.

Question Presented

Whether the Superior Court abused its discretion by denying Johns's motion to suppress.

Standard and Scope of Review

"Where the facts are not disputed and only a constitutional claim of probable cause is at issue," this Court reviews the Superior Court's ruling *de novo*.[39]

Merits

Johns contends that the Superior Court abused its discretion by denying his suppression motion. Here, as he did below, Johns argues that the search warrant for his residence at 514 West 6th Street did not set forth sufficient facts for the issuing magistrate to reasonably conclude that evidence of a crime would be found there.[40] (Opening Br. 16-24). Johns contends that "the information in the affidavit is unreliable, incomplete, reliant upon inferences that require speculation, and are insufficient to support probable cause." (*Id.*). Because the four corners of the

[39] *Sisson v. State*, 903 A.2d 288, 296 (Del. 2006).

[40] To the extent Johns asserts a violation of the Delaware Constitution, he fails to distinguish how its protections differ from those under the Fourth Amendment under the facts of this case, and thus the claim is waived. *See Ortiz v. State*, 869 A.2d 285, 290 (Del. 2005).

warrant established a fair probability that contraband associated with Johns's drug dealing would be found there, his arguments fail.

Under the Fourth Amendment, a search warrant may only issue upon a showing of probable cause.[41] "It is well settled that any finding of probable cause must be based on the information that appears within the four corners of the application or affidavit."[42] Probable cause exists where, "considering the totality of the circumstances, 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'"[43] A nexus must be established between the "items to be sought and the place to be searched;" however, "[c]oncrete firsthand evidence that the items sought are in the place to be searched is not always required in a search warrant."[44] Rather, the affidavit must provide sufficient facts "for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place."[45] In addition, a magistrate "may draw reasonable inferences from the factual allegations in the affidavit."[46]

---

[41] U.S. Const. amend IV.
[42] *Valentine v. State*, 207 A.3d 566, 570 (Del. 2019).
[43] *Sisson*, 903 A.2d at 296 (quotations omitted).
[44] *Bradley v. State*, 2019 WL 446548, at *5 (Del. Feb. 4, 2019) (quotation omitted).
[45] *Id.* (quotation omitted).
[46] *Sisson*, 903 A.2d at 296.

In denying Johns's suppression motion, the Superior Court appropriately confined its assessment of probable cause to the four corners of the search warrant, and applied deferential review to the finding of the issuing judge. The court concluded that probable cause existed to search Johns's residence.[47] While the court assumed the 2021 tips were impermissibly stale, the court found the remaining information within the affidavit was sufficient to establish probable cause for the issuance of the warrant.[48] The court explained that it could not "say, as a matter of law, that the [July 2022] tip" was stale because it came within a month of when the police began surveillance of Johns and his residence.[49] Although the court found that the July 2022 tip, "in and of itself" was insufficient to justify the search warrant, it rejected Johns's claim that the tip could not "be considered at all because of its supposed lack of reliability."[50] Noting that this Court recently "made clear [in *Diggs v. State*][51] that an anonymous tip can be considered without a reliability analysis when the tip is corroborated by later observations of police," the court held that the July 2022 anonymous tip could be considered without a reliability analysis because the tip was corroborated by later observations of police.[52] The court explained:

---

[47] *Johns*, 2023 WL 3750432, at *2-4.
[48] Id.
[49] *Id.* at *2.
[50] *Id.* at *3.
[51] 257 A.3d 993 (Del. 2021).
[52] *Johns*, 2023 WL 3750432, at *3.

> Here, as in *Diggs*, police corroborated the July 2022 tip with facts gleaned from the two later traffic stops that flowed from the surveillance. During the first stop, the subject confessed he had just purchased drugs from his friend who "cuts hair" at 514 West 6th Street, and during the second, Charles Webster exhibited nervous behavior before stating he did not want to be searched and speeding off. Viewed in their totality, these facts provided the magistrate with sufficient probable cause to issue the warrant.[53]

The court also concluded that "the surveillance and traffic stops *alone* were sufficient to furnish the officers with probable cause to search [Johns's] residence, with or without the anonymous tips outlined in the warrant."[54] The court did not abuse its discretion in denying Johns's motion to suppress.

In arguing the information in the affidavit is insufficient to establish probable cause, Johns encourages this Court to ignore the totality of the circumstances set forth in the affidavit. Contrary to his claim, the affidavit set forth facts sufficient for a judicial officer to form a reasonable belief that evidence of Johns's criminal activity would be found at 514 West 6th Street. The affidavit included specific information obtained from three anonymous tips received between September 2021 and July 2022, which two of the tipsters personally observed. As detailed in the facts section, the tipsters provided consistent details about Johns, his drugs sales from his residence at 514 West 6th Street, where the drugs would be located in the house, Johns's possession of firearms in the residence, and other activities such as

---

[53] *Id*.
[54] *Id.* (emphasis in original).

the barber shop. The affidavit also included corroborating police work and surveillance, including the two traffic stops of individuals officers observed leaving the house, one of whom admitted to purchasing contraband at the house and the other who acted suspiciously and fled after refusing to be searched. Viewed in their totality, these facts provided the magistrate with sufficient probable cause to issue the warrant.[55]

Johns contends that the 2021 tips were stale and that the July 2022 tip, which came within a month of when police started surveillance of Johns and his residence, "could" be stale because there is no indication of when the tipster obtained the information. (Opening Br. 21). Not so. Although the Superior Court found that the 2021 tips were "impermissibly stale," it was not unreasonable for the issuing magistrate to consider those tips because the July 2022 tip corroborated and refreshed the earlier tips and the criminal activity – drug dealing – is of a continuing nature.[56] And, the court did not abuse its discretion in finding the July 2022 tip was

[55] *Loper v. State*, 2020 WL 2843516, at *2 (Del. June 1, 2020) (finding specific information from confidential informants and corroborating surveillance provided sufficient support for probable cause); *Arcuri v. State*, 49 A.3d 1177, 1179 (Del. 2012) (same); *State v. Taylor*, 2025 WL 24801, at *4 (Del. Super. Jan. 2, 2025) (same).

[56] *See State v. Barnes*, 2025 WL 327427, at *4 (Del. Super. Jan. 29, 2025) ("Where recent information corroborates otherwise stale information, probable cause may be found."); *Gardner v. State*, 567 A.2d 404 (Del. 1989) (holding information in affidavit detailing two-year history of drug activity at defendant's residence was not stale).

not stale. While statements of dates and times are instructive, they "are not dispositive to the ascertainment of the validity of probable cause."[57] The question of staleness of probable cause rests primarily upon the nature of the criminal activity alleged in the affidavit accompanying the warrant.[58] Here, the July 2022 tip concerned an ongoing activity, drug dealing, and the police corroborated the information from the tip within a month and then applied for a warrant.

Furthermore, even assuming, as the Superior Court did, that the 2021 tips were "impermissibly stale" and thus should be disregarded,[59] the affidavit for the search warrant provided probable cause, independent of the 2021 tips, to reasonably conclude that contraband – marijuana and other illegal substances and a firearm – would be found at 514 West 6th Street. And, Johns's argument ignores that the Superior Court found that "the surveillance and traffic stops *alone* were sufficient to furnish the officers with probable cause."[60]

Johns also claims the three anonymous tips should not have been considered because they lacked sufficient information to support a finding of reliability.

---

[57] *Jensen v. State*, 482 A.2d 105, 111 (1984).
[58] *Id*.
[59] "[T]ainted allegations in an affidavit do not vitiate a warrant which is otherwise validly issued upon probable cause reflected in the affidavit." *Jones v. State*, 28 A.3d 1046, 1058 (Del. 2011) (quotation omitted). "[A] reviewing court may excise the tainted evidence and determine whether the remaining, untainted evidence would provide a neutral magistrate with probable cause to issue [the] warrant." *Id.* (quotation omitted).
[60] *Johns*, 2023 WL 3750432, at *3 (emphasis in original).

(Opening Br. 19-24). He is wrong. As the Superior Court found, Johns's argument "runs contrary to Delaware law."[61] This Court has held that an anonymous tip regarding criminality can be considered to support probable cause without a reliability analysis when the tip is corroborated by later observations of police.[62] Here, investigators not only corroborated the three similar, detailed anonymous tips with information about Johns through DELJIS, but also conducted surveillance and stopped one person moments after they left the house who admitted to purchasing contraband there and another who acted suspiciously and fled from a traffic stop. The informants' tips, which included detailed, first-hand information provided by the first tipster and the July 2022 tipster, were sufficiently corroborated by police surveillance that, when taken in conjunction with investigators' independent, direct

[61] *Id*.

[62] *See McCurdy v. State*, 2025 WL 751352, at *1 (Del. Mar. 10, 2025) (finding anonymous tip was sufficiently corroborated by canine open-air sniff detecting illegal drugs in storage unit); *Cooper v. State*, 2011 WL 6039613, at *5 (Del. Dec. 5, 2011) ("If the informant's tip can be corroborated, the tip may establish probable cause, even where nothing is known about the informant's credibility."); *Tolson v. State*, 900 A.2d 639, 643 (Del. 2006) (same); *Taylor*, 2025 WL 24801, at *4 (finding informant's tip could form basis for probable cause because it was corroborated, despite fact affidavit provided no basis for conclusion that informant was reliable); *see also Florida v. J.L.*, 529 U.S. 266 (2000) (allowing information from anonymous tips when corroborated to assist in reasonable suspicion to stop); *cf. LeGrande v. State*, 947 A.2d 1103, 1111 (Del. 2008) (totality of circumstances did not provide magistrate substantial basis for concluding there was probable cause that evidence or contraband would be found on premises where police did not corroborate tipster's assertion of illegality).

observations of potential criminality, provided a sufficient basis for the magistrate to find probable cause.[63] Furthermore, although Johns contends that the July 2022 tip was not reliable because there was no evidence that the tip was based on first-hand observations, when the tipster obtained the information, and if there was a relationship between Johns and the tipster, Johns overlooks that the first tipster and the July 2022 tipster personally observed the reported events, "which, if believed, signaled a reliable basis of knowledge."[64]

Johns argues that the Superior Court's decision in *State v. Cannon*,[65] supports suppression here. (Opening Br. 23-24). He is wrong. In *Cannon*, the affidavit failed to set forth any direct observation of illegal or suspicious activity associated with the place to be searched, and probable cause was instead supported "solely by statements of police expertise combined with the mere presence of a defendant's car at both a drug transaction and his confirmed residence."[66]

Unlike *Cannon*, the warrant in this case established a logical nexus between Johns's criminal activity and 514 West 6th Street. Multiple individuals informed

---

[63] *Valentine*, 207 A.3d at 573 ("The most straightforward way to establish an informant's basis of knowledge is by alleging that the informant is providing first-hand knowledge."); *Taylor*, 2025 WL 24801, at *4-6 (finding tip was sufficiently corroborated by surveillance when taken in conjunction with other evidence).
[64] *Id*.
[65] 2007 WL 1849022 (Del. Super. June 27, 2007).
[66] *See Cannon*, 2007 WL 1849022, at *6.

investigators that Johns was selling illegal drugs from that address and that he illegally stored firearms there. Investigators established that Johns resided there and observed him coming and going from that location. Investigators also did surveillance and observed at least two instances of illegal or suspicious activity there, stopping one person who admitted to purchasing drugs at the house and another who acted suspiciously and fled. Accordingly, the affidavit here set forth facts sufficient for a judicial officer to form a reasonable belief that evidence of Johns's criminal activity would be found within that residence.

Viewing the totality of circumstances, the judge reasonably determined that the affidavit provided probable cause that Johns was in possession of illegal drugs and a firearm as a person prohibited, based upon the affidavit's factual averments, the corroboration of the informants' tips, investigators' surveillance and traffic stops, and the logical nexus between Johns's residence and his criminal activity. Therefore, the Superior Court did not abuse its discretion by denying Johns's motion to suppress.

III. THE SUPERIOR COURT DID NOT COMMIT PLAIN ERROR IN FAILING TO *SUA SPONTE* DECLARE THAT 11 *DEL. C.* § 1448 VIOLATED THE SECOND AMENDMENT, EITHER ON ITS FACE OR AS-APPLIED TO JOHNS.

Question Presented

Whether the Superior Court committed plain error by failing to *sua sponte* declare that 11 *Del. C.* § 1448 violated the Second Amendment on its face and as-applied to Johns.

Standard and Scope of Review

Because no claims of constitutional deficiency were ever presented to the Superior Court, Johns's claims may now be reviewed by this Court only for plain error.[67]

Merits

Under 11 *Del. C.* § 1448, persons who have been convicted in this State or other jurisdictions of a felony or crime of violence are prohibited from purchasing, owning, possessing, or controlling a deadly weapon or ammunition for a firearm.[68] Johns, who had previously been convicted of Drug Dealing – Aggravated Possession under former 16 *Del. C.* § 4752, a violent felony, and PFBPP under section 1448(e), a violent felony, (B48), was found guilty in this case under section 1448 of illegally

[67] *Abrams v. State*, 689 A.2d 1185, 1187 (Del. 1997); *Fatir v. State*, 2016 WL 3525273, at *1 (Del. May 24, 2016); Supr. Ct. R. 8.
[68] 11 *Del. C.* § 1448.

possessing a firearm and ammunition and of possessing a firearm during the commission of a felony (drug dealing).[69]

Johns contends, for the first time on appeal, that his person prohibited convictions under section 1448 are unconstitutional under the Second Amendment, facially and as-applied to him. (Opening Br. 25-51). Citing the United States Supreme Court's decisions in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*[70] *and United States v. Rahimi*[71] and the Third Circuit's decision in *Range v. Attorney General*,[72] Johns argues that section 1448 is unconstitutional both facially "in all its applications" and as-applied to him. (Opening Br. 25-51). Johns admits that he never presented these claims to the trial court. (*Id.*). Therefore, he has waived these claims unless he can demonstrate plain error.[73] An error is plain only if it is "clear

[69] Because Johns did not raise an as-applied challenge below, the parties did not develop the record concerning Johns's prior criminal history, aside from the fact that he had these two prior violent felony convictions. (B48-49). The State notes that, had Johns raised this below, the State would have also directed its arguments to Johns's entire criminal history because an as-applied challenge looks to the specific facts of a defendant's conduct and circumstances. *Pitslides v. Barr*, 2025 WL 441757, at *6 (3d Cir. Feb. 10, 2025); *United States v. Williams*, 113 F.4th 637, 659-60 (6th Cir. 2024).
[70] 597 U.S. 1 (2022).
[71] 602 U.S. 680.
[72] *Range v. Attorney General*, 124 F.4th 218 (3d Cir. 2024).
[73] Supr. Ct. R. 8.

or obvious, rather than subject to reasonable dispute" under existing law.[74] Johns's claims fail because he has not established any error, plain or otherwise.

A. Section 1448 Is Facially Constitutional.

Johns first challenges section 1448 on its face. A facial challenge attacks a statute's constitutionality based on its text alone and does not consider the application of that statute to the facts or circumstances of a particular case.[75] To succeed on a facial attack, Johns must overcome a strong presumption that section 1448 is constitutionally valid and "establish that no set of circumstances exist under which the [statute] would be valid" by clear and convincing evidence.[76] Put differently, the State need only demonstrate that section 1448 is constitutional in some of its applications.[77] All reasonable doubts as to the validity of a law must be resolved in favor of the constitutionality of the legislation.[78] A facial challenge is the "most difficult challenge to mount successfully."[79]

---

[74] *United States v. Goodnight*, 2025 WL 1276000, at *1 (3d Cir. May 2, 2025); *United States v. Olano*, 507 U.S. 725, 731-34 (1993).
[75] *State v. Griffin*, 2011 WL 2083893, at *9 (Del. Super. May 16, 2011).
[76] *United States v. Salerno*, 481 U.S. 739, 745 (1987); *Schnell v. Department of Servcs.*, 2025 WL 271785, at *4 (Del. Jan. 23, 2025); *Wilmington Med. Ctr., Inc. v. Bradford*, 382 A.2d 1338, 1342 (Del. 1978); *Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974).
[77] *Rahimi*, 602 U.S. at 693.
[78] *Atlantis I Condominium Ass'n v. Bryson*, 403 A.2d 711, 714 (Del. 1979).
[79] *Rahimi*, 602 U.S. at 693; *Salerno*, 481 U.S. at 745; *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*, 73 A.3d 934, 948-49 & n.55 (Del. Ch. 2013).

Johns's facial challenge to section 1448 fails because he cannot establish that it is plain under existing caselaw that there is "no set of circumstances" under which the statute would be valid.[80] Nor has he established any error. As discussed below, felon-in-possession statutes are presumptively lawful and, in any event, because section 1448 has at least some permissible constitutional applications, including as-applied to Johns in particular, his facial challenge must fail.[81]

Moreover, while Johns contends that "[w]hether 11 *Del. C.* § 1448 violates the Second Amendment is an issue of first impression" (Opening Br. 26), he fails to recognize that this Court had prior occasion to uphold the constitutionality of an older version of section 1448,[82] as well as the constitutionality of the current version of section 1448 under the Delaware Constitution.[83] In these decisions, consistent with other courts across the country, this Court recognized that the right to bear arms, as provided in the federal constitution and in article I, section 20 of the Delaware

---

[80] *Rahimi*, 602 U.S. at 693 (quoting *Salerno*, 481 U.S. at 745); *Goodnight*, 2025 WL 1276000, at *2.
[81] *Id*.
[82] *State v. Robinson*, 251 A.2d 552 (Del. 1969) (upholding constitutionality of section 1448's predecessor, which similarly prohibited convicted felons from possessing firearms); *State v. Jackson*, 2023 WL 8649996, at *1 (Del. Super. Dec. 13, 2023) (rejecting argument that section 1448 is unconstitutional), *aff'd on other grounds*, 2025 WL 227682 (Del. Jan. 16, 2025) (not addressing argument but noting rejection of argument below); *see also State v. Keys*, 2024 WL 3385590, at *1-2 (Del. Super. July 12, 2024).
[83] *Short v. State*, 1991 WL 12101, at *1-2 (Del. Jan. 14, 1991).

Constitution, "may be subject to reasonable restrictions for the public safety, including limitations on possession by persons with criminal records."[84]

In upholding the constitutionality of section 1448's predecessor, which similarly prohibited felons – *i.e.*, those guilty of serious crimes – from possessing deadly weapons, this Court found a proper public policy through the legislature's "manifest intention … to protect the public from the actions of members of that class of persons who, by their past conduct, have shown themselves unworthy to possess firearms."[85] According to this Court, "[f]elons, as a class, constitute a reasonable classification to be adopted by the General Assembly for that purpose."[86]

More recently, in *Short v. State*,[87] this Court held that section 1448, which prohibits convicted felons from possessing deadly weapons and ammunition for a firearm, does not violate the Delaware Constitution, explaining:

> Courts throughout the country in considering statutes similar to 11 *Del. C.* § 1448 have uniformly ruled that the right to bear arms as guaranteed in various state constitutions and the federal constitution may be subject to reasonable restrictions for the public safety, including limitations on possession by persons with criminal records…. Under the circumstances, defendant's argument that [section 1448] … violates

[84] *Id.*; *Robinson*, 251 A.2d at 555; *see also State v. Rumpff*, 308 A.3d 169, 181 (Del. Super. 2023) (recognizing that legislature has power to prohibit "dangerous people" from possessing guns and to limit categories of people from the right to bear arms when "necessary to protect the public safety").
[85] *Robinson*, 251 A.2d at 555.
[86] *Id*.
[87] 1991 WL 12101.

> defendant's constitutional right to bear arms is found to be without merit.[88]

Although Johns only asserts that section 1448 violates the Federal Constitution, this Court has found that the Delaware Constitution "[o]n its face, … is intentionally broader than the Second Amendment and protects the right to bear arms outside the home, including for hunting and recreation."[89] Johns has failed to show that this Court's reasoning in *Short* would not hold true under the Federal Constitution.

Johns appears to contend that the United States Supreme Court's recent decision in *Bruen* invalidated the longstanding presumption that felon dispossession statutes, such as section 1448, are lawful and claims that it is instead the State's "heavy burden" to establish the constitutionality of section 1448 "by identifying well-established historical analogues." (Opening Br. 26-29). By admittedly failing to raise his argument below, this Court's review is limited to "obvious" or "clear" errors. No such error exists here.

A Superior Court Commissioner recently considered and rejected a similar argument in *State v. Keys*.[90] In *Keys,* the defendant argued that the United States Supreme Court's decision in *Bruen* negated the "presumptive lawfulness" of felony

---

[88] *Id.* at *1-2; *see Doe v. Wilmington Housing Auth.*, 88 A.3d 654, 664 (Del. 2014) ("In *Short v. State*, we held that 11 *Del. C.* § 1448 … does not violate [the Delaware Constitution].").
[89] *Id.* at 665.
[90] 2024 WL 3385590.

firearm dispossession statutes.[91] The Commissioner found that *Bruen* did not "cast any doubt on *Heller*'s conclusion that felon dispossession statutes are 'presumptively lawful,'" explaining:

> In *Heller*, the Supreme Court held in 2008 that the Second Amendment guarantees citizens the personal right to possess firearms, but also noted that right is "not unlimited." There, the Court employed a "means-end" approach, considering both the historical tradition of the firearm regulation in question and the modern purpose it serves when assessing Constitutional challenges under the Second Amendment…. [T]he *Heller* Court noted that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons," and felon dispossession statutes are "presumptively lawful." These sentiments were expressly reiterated by the Supreme Court in 2010 in *McDonald*.
>
> Fourteen years after *Heller*, the Supreme Court in *Bruen* clarified the analysis to utilize when considering whether firearm regulations are consistent with the Second Amendment. The new test stated, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." In simple terms, under this updated approach, lower courts are directed to "assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding."
>
> Keys argues this new test disposed of the presumption that felon dispossession statutes were lawful and *Bruen* should be read to abrogate the findings of *Heller* and *McDonald*. But the Supreme Court did not purport to overturn *Heller* or *McDonald* with their decision in *Bruen*. On the contrary, six of the nine Justices explicitly noted the majority opinion did not cast any doubt on *Heller*'s conclusion that felon dispossession statutes are "presumptively lawful."[92]

---

[91] *Id.* at *1.

[92] *Id.* at *1-2 (quotations and citations omitted).

As the Superior Court found in *Keys*, nothing in *Bruen* invalidated the presumption that felon dispossession statutes, such as section 1448, are lawful.

Furthermore, to the extent that Johns relies on the United States Supreme Court's decision in *Rahimi* and the Third Circuit's decision in *Range*, which were issued after *Bruen*, to argue that section 1448 is facially unconstitutional, his claim is unavailing. Neither of these opinions undermine the general constitutionality of section 1448 or overrule the United States Supreme Court's recognition in *Heller* and *McDonald* that the Second Amendment does not preclude prohibitions on felons possessing firearms and that such prohibitions are presumptively lawful.[93] Furthermore, as the Superior Court recently noted, *Range* - a federal circuit decision addressing a federal statute does not directly impact the legality or constitutionality of Delaware's person prohibited statute.[94]

Johns has failed to show any "clear" or "obvious" error casting doubt on the Supreme Court's recent reiteration that longstanding prohibitions on felons possessing firearms are "presumptively lawful." Because any error in Johns's

---

[93] *Rahimi*, 602 U.S. at 698-99 (reaffirming *Heller*'s pronouncement that prohibitions "on the possession of firearms by 'felons'" "presumptively lawful" and emphasizing that Second Amendment continues to permit State to disarm "categories of persons thought by the legislature to present a special danger of misuse"); *Range*, 124 F.4th at 232 (explicitly limiting its holding as "narrow" and finding only that section 922(g)(1) was unconstitutional *as-applied to Range* given his violation of Pennsylvania's statute prohibiting making false statement to obtain food stamps).

[94] *Jackson*, 2023 WL 8649996, at *1.

person prohibited convictions are thus not plain, his facial challenge fails the "plain" step of plain-error review. This appeal can be decided based on this determination alone.

Even if this Court were to reach the "error" step of plain error review, Johns's argument fails because he cannot show that section 1448 is unconstitutional in all its applications. At a minimum, it is far from obvious that the Second Amendment permits possession of a firearm by a convicted violent felon like Johns, who was previously convicted of at least two violent felonies (B48-49), and Johns also fails to show that section 1448 is inconsistent with the history and tradition of American firearm regulations for the reasons discussed below. The Second Amendment does not entitle a convicted felon like Johns – already convicted of multiple felonies, including a firearm violent felony and a drug-trafficking violent felony – to continue possessing firearms. Accordingly, Johns's plain error facial challenge to section 1448 is unavailing.

B. Section 1448 is constitutional as-applied to Johns.

An "as-applied" challenge requires Johns to establish that section 1448 is unconstitutional as-applied to the facts of his specific case.[95] Because Johns did not argue below that section 1448 is unconstitutional, as-applied to him, this Court reviews for plain error. Other courts have rejected similar "as-applied" challenges

[95] *Griffin*, 2011 WL 2083893, at *9.

because any error is simply not plain.[96] The same result should occur here because it is far from obvious that the Second Amendment permits possession of a firearm by a convicted violent felon like Johns. Johns's claim also fails because disarming a person with Johns's criminal history of committing violent felonies is consistent with historical traditions.

Ratified in 1791, the Second Amendment provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.[97]

The Supreme Court has determined that this provision protects the right of an ordinary, law-abiding individual to keep and bear arms.[98] The Court also set forth in *Bruen* a two-step analysis for Second Amendment as-applied challenges:

> Under *Bruen*'s first step, a court must determine whether the Second Amendment's plain text covers an individual's conduct. If the court concludes that the challenger is among "the people" who have Second Amendment rights and the text of the Second Amendment applies to the conduct at issue, the Constitution presumptively protects that conduct. At *Bruen*'s second step, the court must determine whether the restriction in question is consistent with the Nation's historical tradition of firearm regulation.[99]

---

[96] *See, e.g.*, *Goodnight*, 2025 WL 1276000, at *1; *United States v. Langston*, 110 F.4th 408 (1st Cir. 2024); *United States v. Rodriguez*, 2024 WL 3518307, at *3 (3d Cir. July 24, 2024); *United States v. Dorsey*, 105 F.4th 526, 530 (3d Cir. 2024).

[97] U.S. Const. amend. II.

[98] *Bruen*, 597 U.S. at 8-9; *McDonald*, 561 U.S. at 750; *Heller*, 554 U.S. at 595.

[99] *Dorsey*, 105 F.4th at 531 (citing *Bruen*, 597 U.S. 1).

As-applied to Johns, section 1448 passes both prongs of the analysis laid out in *Bruen* and is therefore constitutional. First, Johns does not fall within the scope of the Second Amendment based on his conduct or status. However, even if this Court were to conclude or assume *arguendo* that the Second Amendment applies to Johns, Johns has failed to establish plain error because it is not "obvious" that the Second Amendment permits Johns to continue bearing arms even after his multiple violent felony convictions.

1. The plain text of the Second Amendment does not cover Johns's conduct.

Citing the Third Circuit's decision in *Range*, Johns contends that he is among the people covered by the Second Amendment. Johns's claim is unavailing, however, because he has not established that it is "clear" that the Second Amendment's plain text encompasses his conduct. As discussed below, precedent from the Superior Court and other courts demonstrates that Johns is outside the scope of the Second Amendment based on either his activity – possession of a firearm during the commission of a felony (drug dealing) or his membership in an exempt category (convicted violent felon).

The United States Supreme Court has emphasized that the constitutional right under the Second Amendment is tied specifically to the use of firearms for lawful

purposes by ordinary, "law-abiding" citizens.[100] That limitation, by definition, does not encompass firearms used to commit crimes – like drug dealing. Consistent with that limitation, the Supreme Court in *Heller*, *McDonald*, and *Bruen* affirmed the government's power to impose a "variety" of regulations on firearm use and possession, including through licensing regimes and the "longstanding prohibition[] on the possession of firearms by felons."[101]

After *Bruen* and *Rahimi*, the Fourth Circuit emphasized the same principle: "the core of the Second Amendment right as protecting 'law-abiding' citizens."[102] In rejecting an as-applied challenges to the federal felon-in-possession statute, the Fourth Circuit explained that the Second Amendment categorially does not protect a felon's right to possess a firearm for several reasons, including because the Second Amendment right "protects firearms possession by the law-abiding, not by felons."[103]

The Superior Court also recently determined "whether *people*, rather than their conduct, fall outside of Second Amendment protection."[104] In *State v. Rumpff*, the Superior Court held that a defendant, who fell into the "presumptively

---

[100] *See Bruen*, 597 U.S. at 8-9; *McDonald*, 561 U.S. at 750, 780; *Heller*, 554 U.S. at 595, 625, 630.
[101] *Heller*, 554 U.S. at 626; *McDonald*, 561 U.S. at 786; *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring).
[102] *United States v. Hunt*, 123 F.4th 697, 705 (4th Cir. 2024).
[103] Id.
[104] *Rumpff*, 308 A.3d at 179 (emphasis in original).

dangerous" category of people subject to a domestic violence protection from abuse, was "an excluded class under the Second Amendment."[105] The court interpreted *Bruen* as emphasizing that the Second Amendment "only extends to 'law-abiding member[s] of the community.'"[106] The court also acknowledged that other jurisdictions have enacted laws covering various categories of individuals who are required to surrender firearms, including the mentally ill and violent felons, and that these individuals "fall into a presumptively dangerous category and are therefore exempt from Second Amendment protections due to the danger they pose when in possession of firearms."[107] The court determined that "[t]he Supreme Court has consistently confirmed the constitutionality of these categorial limitations" and that "these categorical limitations fall into a list that 'does not purport to be exhaustive.'"[108]

Here, Johns, as a marijuana and methamphetamine dealer possessing a stolen, firearm that he was prohibited from possessing, was, by definition, not law-abiding, and by possessing the stolen, loaded firearm during the commission of the felony of drug dealing, he did not have the firearm for a lawful purpose.[109] Whether viewed

---

[105] *Id.* at 183, 186.
[106] *Id.*
[107] *Id.* at 179-80.
[108] *Id.* at 180.
[109] *United States v. Rodich*, 2025 WL 1383074, at *5 (W.D. Pa. May 13, 2025) (holding Second Amendment does not protect defendant's conduct because he possessed the firearm for unlawful purpose of furthering drug trafficking).

as a regulation of activity or category of persons, the result is the same: it is not "clear" that Johns, previously convicted of multiple crimes, including two violent felonies (*see* B48-49), and convicted in this case of possessing a loaded firearm during the commission of a felony (drug dealing), falls within the scope of the Second Amendment. Accordingly, Johns has not established plain error.

Johns claims that the Supreme Court's decision in *Rahimi* "forecloses" argument that the Second Amendment is limited to "law-abiding, responsible citizens." (Opening Br. 30-35). Relying on Third Circuit cases, including *Range*, Johns contends that the Supreme Court's repeated references to "law-abiding citizens" and "lawful purposes" amount to little more than *dicta* and should be ignored. (*Id.*). However, *Rahimi* does not render the alleged error in his case plain. Indeed, the *Rahimi* majority never said anything to suggest "law-abiding" and "lawful purpose" did not restrict the scope of Second Amendment protections. Indeed, *Rahimi* expressly re-affirmed *Heller*'s pronouncement that prohibitions "on the possession of firearms by 'felons'" were "presumptively lawful" and emphasized that the Second Amendment continues to permit the State to disarm "categories of

---

(citing *United States v. Mollett*, 2025 WL 564885, at *5 (W.D. Pa. Feb. 20, 2025) (same); *United States v. Waulk*, 2024 WL 3937489, at *6 (W.D. Pa. Aug. 26, 2024) (same); *United States v. Birry*, 2024 WL 3540989, at *6 (M.D. Pa. July 25, 2024) (same); *United States v. Bost*, 2023 WL 7386567, at *3 (W.D. Pa. Nov. 8, 2023) ("[T]he Second Amendment does not protect [Bost's] proposed conduct – possession of a stolen firearm.").

persons thought by a legislature to present a special danger of misuse."[110] Although the Supreme Court rejected the use of "responsible" as an unduly vague qualifier, "responsible" and "law-abiding" are not the same thing. Whether someone is using a gun for an unlawful purpose does not present the same vagueness concerns as determining whether he's using a gun responsibly. Unsurprisingly, then, the *Rahimi* majority never equated the two terms. Furthermore, Johns's reliance on Justice Thomas's dissent in support of his argument is also misplaced. As the Supreme Court recently reminded, "[i]t is the Court's ruling, not the one set forth by the dissents, that binds the lower courts."[111]

Any error is also not clear or obvious under *Range's* "narrow" opinion. In *Range*, the Third Circuit held that the federal felon-in-possession statute was unconstitutional as-applied to a putative gun purchaser who had a misdemeanor conviction for falsifying income to obtain food stamps.[112] In so ruling, the court rejected the argument that "*Rahimi* left open the possibility of 'banning the possession of guns by categories of person thought by the legislature to present a special danger of misuse,'" concluding that the contention was overbroad for the

---

[110] *Rahimi*, 602 U.S. at 698-99.

[111] *See Bondi v. VanDerStok*, 145 S. Ct. 857, 877 (2025) (Sotomayor, J. concurring); *see also Dorsey*, 105 F.4th at 530 n.7 (noting "dissent … can hardly be relied upon to demonstrate that the District Court's purported error was obvious").

[112] *Range*, 124 F.4th at 230-32.

current federal felon-in-possession ban.[113] While there is admittedly a split in authority concerning the determination reached under the first part of *Bruen*'s inquiry,[114] *Range* is not binding on this Court, and is against the weight of authority.[115]

2. Section 1448 is consistent with the Nation's historical tradition of firearm regulation.

Even if Johns was exercising the right of "law-abiding citizens with ordinary self-defense needs" by keeping a loaded, stolen handgun in the same room as a distributable amount of marijuana and methamphetamine, his "as-applied" challenge fails because he cannot show error, plain or otherwise, based on historical practice.

Bruen "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding."[116] The State is only required to provide a "historical analogue" and not an "historical twin" or "dead ringer" for the challenged restriction.[117] The question, rather, is "whether

---

[113] Id.

[114] *See, e.g.*, *Hunt*, 123 F.4th at 705; *United States v. Diaz*, 116 F.4th 458, 466 (5th Cir. 2024); *United States v. Morton*, 123 F.4th 492, 496 n.1, 497 (6th Cir. 2024); *United States v. Mitchell*, 2024 WL 4973106, at *1 (11th Cir. Dec. 4, 2024) (reaffirming, notwithstanding *Rahimi*, felons are, as category, "'disqualified' from exercising their Second Amendment right").

[115] *Keys*, 2024 WL 3385590, at *3 & n.42.

[116] *Bruen*, 597 U.S. at 26.

[117] *Rahimi*, 602 U.S. at 692, 699-700.

modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified."[118]

There is clear historical support for restricting the possession of firearms by persons who, like Johns, previously committed dangerous felonies. Indeed, in affirming the right of "law-abiding, responsible citizens" to keep firearms for self-defense, *Heller* clarified that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited,"[119] and that "nothing in [its] opinion should be taken to cast doubt" on certain "presumptively lawful regulatory measures," such as "longstanding prohibitions on the possession of firearms by felon."[120] Consistently, the Supreme Court in *Bruen* repeatedly emphasized "law-abiding" as a limitation on the Second Amendment's reach.[121] And two concurring opinions in *Bruen* reaffirmed *Heller*'s statements that felon dispossession statutes are longstanding and presumptively lawful.[122]

The Second Amendment "codified a right 'inherited from our English ancestors.'"[123] In England, a 17th century statute empowered the government to

---

[118] *Bruen*, 597 U.S. at 29.
[119] *Heller*, 554 U.S. at 626.
[120] *Id.* at 626-27 & n.26.
[121] *Bruen*, 597 U.S. at 8-12, 15-16, 26-27, 29-34, 37-39, 59-60, 69-71 & n.8-9.
[122] *Id.* at 71-79 (Alito, J., concurring); *see also id.* at 79-81 (Kavanaugh, J., concurring).
[123] *Heller*, 554 U.S. at 599 (citation omitted).

"seize all arms in the custody or possession of any person" who was "judge[d] dangerous to the Peace of the Kingdom."[124] The use of that statute "continued unabated" after the adoption of the 1689 English Bill of Rights, which expressly guaranteed the right to keep and bear arms.[125]

Colonial and early state legislatures likewise disarmed individuals who "posed a potential danger" to others.[126] Some early laws categorically disarmed entire groups deemed dangerous or untrustworthy, such as those who refused to swear allegiance.[127] Other laws called for case-by-case judgments about dangerousness.[128] Still other laws disarmed individuals who had demonstrated their dangerousness by engaging in particular types of conduct, such as carrying arms in a manner that spreads fear or terror among the people.[129]

---

[124] Militia Act 1662, 13 & 14 Car. 2, c. 3, § 13.
[125] Diarmuid F. O'Scannlain, "Glorious Revolution to American Revolution: The English Origin of the Right to Keep and Bear Arms," 95 Notre Dame L. Rev. 397, 405 (2019).
[126] NRA v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 700 F.3d 185, 200 (5th Cir. 2012).
[127] *Id.*; *see, e.g.*, Act of May 1, 1776, ch. 21, § 1, 1776 Mass. Acts 479; Act of June 13, 1777, ch. 21, § 4, 1777 Pa. Laws 63; Act of May 28, 1777, ch. 3 (Va.), reprinted in 9 William Waller Hening, The Statutes at Large; Being a Collection of all the Laws of Virginia from the First Session of the Legislature, in the Year 1619, at 281-83 (1821).
[128] *See, e.g.*, Act for Constituting a Council of Safety, ch. 40, § 20, 1777 N.J. Laws 90 (empowering officials to "take from such Persons as they shall judge disaffected and dangerous to the present Government, all the Arms, Accoutrements and Ammunition which they own or possess").
[129] *See, e.g.*, Act for the Punishing of Criminal Offenders, 1692 Mass. Laws 11-12; Act for the Punishing Criminal Offenders, 1696-1701 N.H. Laws 15.

Even the *Range* court recognized that "Founding-era governments disarmed groups they distrusted," such as "Loyalists" and Native Americans.[130] These were people "who, the political majority believed, would threaten the orderly functioning of society if they were armed."[131] The group of persons convicted of dangerous crimes, such as felony drug trafficking or possessing a firearm while trafficking drugs, would qualify as "distrusted" by society, and thus may be disarmed consistent with the Second Amendment.

Precursors to the Second Amendment proposed in the state ratifying conventions likewise suggest that legislatures may disarm certain categories of individuals, including those who are dangerous. A proposal presented at the Pennsylvania ratifying convention, for instance, stated that "no law shall be passed for disarming the people or any of them unless for crimes committed, or real danger of public injury from individuals."[132] A proposal presented by Samuel Adams at the Massachusetts ratifying convention likewise provided that Congress may not "prevent the people of the United States, who are peaceable citizens, from keeping their own arms."[133]

---

[130] *Range*, 124 F.4th at 229-30.
[131] *Range v. United States*, 69 F.4th 96, 111 (3d Cir. 2023) (Ambro, J., concurring).
[132] 2 Bernard Schwartz, The Bill of Rights: A Documentary History 665 (1971) (emphasis added).
[133] *Id.* at 681 (emphasis added).

Post-ratification practice points in the same direction. In the mid-19th century, many States enacted laws requiring "those threatening to do harm" to "post bond before carrying weapons in public."[134] Those statutes show that individuals who were "reasonably accused of intending to injure another or breach the peace" could properly be subject to firearm restrictions that did not apply to others.[135] Or as one early scholar wrote, the government may properly restrict a person's right to carry firearms when there is "just reason to fear that he purposes to make an unlawful use of them."[136]

The understanding that dangerous individuals could be disarmed persisted after the Civil War. In 1866, for example, a federal Reconstruction order applicable to South Carolina provided that the "rights of all loyal and well-disposed inhabitants to bear arms will not be infringed," but that "no disorderly person, vagrant, or disturber of the peace, shall be allowed to bear arms."[137] A circular issued by the Freedman's Bureau at around the same time explained that a person "may be disarmed if convicted of making an improper or dangerous use of weapons."[138]

---

[134] *Bruen*, 597 U.S. at 55-57; *see, e.g.*, Mass. Rev. Stat. ch. 134, § 16 (1836); Me. Rev. Stat. ch. 169, § 16 (1840); Mich. Rev. Stat. ch. 162, § 16 (1846).
[135] *Bruen*, 597 U.S. at 55-58.
[136] William Rawle, A View of the Constitution of the United States of America 126 (2d ed. 1829).
[137] Cong. Globe, 39th Cong., 1st Sess. 908-909 (1866).
[138] *Bruen*, 597 U.S. at 62-64 (citation omitted)

In keeping with that history, the Supreme Court explained in *Heller* that the right to keep and bear arms belongs only to "law-abiding, responsible citizens."[139] And in *Bruen*, the Court stated that the Second Amendment protects the right of "an ordinary, law-abiding citizen" to possess and carry arms for self-defense.[140] Those descriptions suggest that the government may properly disarm citizens who are dangerous, irresponsible, or unlikely to abide by the law.

Here, the historical tradition of firearm regulation supports Johns's continued status as a person prohibited from possessing a firearm. Johns has at least two violent felony convictions, including one for drug dealing and one for violating gun laws. And it is hardly obvious under Delaware caselaw that such convictions are not themselves enough evidence of dangerousness to justify disarmament. Those who commit violent crimes obviously are dangerous to the public peace and would be disarmed at the time of the Founding.[141] Johns was convicted of the violent felony of possessing a firearm while a prohibited person. That conviction shows that he cannot be trusted to obey firearm regulations designed to protect public safety, and thus that he falls into the historical group of people who "may be disarmed if

---

[139] *Heller*, 554 U.S. at 635.
[140] *Bruen*, 597 U.S. at 8-12.
[141] *See* Militia Act 1662, 13 & 14 Car. 2, c. 3, § 13 (17th century statute empowering the government to "seize all arms in the custody or possession of any person" who was "judge[d] dangerous to the Peace of the Kingdom.").

convicted of making an improper or dangerous use of weapons."[142] Furthermore, other courts have explained that "drug trafficking is the kind of conviction that could justify disarmament because drug dealing risks violence".[143] This starkly contrasts with the nature of the predicate offense at issue under *Range*—falsifying income to obtain food stamps.[144] And following *Rahimi*, the majority of a Sixth Circuit judicial panel in one of its decisions has concluded that permanently disarming a felon who had committed violent crimes "against the person" did not run afoul of *Rahimi*, which involved temporary disarmament, and noted that the Supreme Court "at times summarized its historical analysis in *Rahimi* without respect to time limitations."[145] So it is hardly self-evident that disarming Johns, given his prior convictions, even permanently, is unconstitutional.

In sum, barring the defendant's future possession of firearms is squarely "part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."[146]

---

[142] *Bruen*, 597 U.S. at 62-64.
[143] *Goodnight*, 2025 WL 1276000, at *2; *see Muscarello v. United States*, 524 U.S. 125, 132 (1998) (describing connection between drugs and firearms as "dangerous combination"); *United States v. Luciano*, 329 F.3d 1, 6 (1st Cir. 2003); *see also Smith v. United States*, 508 U.S. 223, 240 (1993) (same).
[144] *See Rodriguez*, 2024 WL 3518307, at *3; *United States v. Cotton*, 2023 WL 6465836, at *4 (E.D. Pa. Oct. 4, 2023); *Keys*, 2024 WL 3385590, at *3.
[145] *See Morton*, 123 F.4th at 496 n.1, 499-500 (cleaned up). The Sixth Circuit reached this conclusion despite the defendant arguing that his prior felony convictions were for nonviolent crimes. *See id.* at 495.
[146] *Bruen*, 597 U.S. at 19-20.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below for the foregoing reasons.

/s/ Carolyn S. Hake
Carolyn S. Hake (Bar I.D. No. 3839)
Deputy Attorney General
Delaware Department of Justice
Carvel State Office Building
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 577-8500

Dated: June 11, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LAMOTTE JOHNS,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 441, 2024
	)	
STATE OF DELAWARE,	)	On Appeal from the
	)	Superior Court of the
Plaintiff Below,	)	State of Delaware
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 2016.

2. This brief complies with the type-volume limitation of Rule 14(d)(i) because it contains 11,968 words, which were counted by Microsoft Word 2016.

Dated: June 11, 2025

/s/ Carolyn S. Hake
Carolyn S. Hake
Deputy Attorney General