



IN THE SUPREME COURT OF THE STATE OF DELAWARE

MASHAWN LEWIS,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 26, 2026
	)	
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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TABLE OF CONTENTS

TABLE OF CITATIONS	ii
NATURE AND STAGE OF THE PROCEEDINGS	1
SUMMARY OF THE ARGUMENT	2
STATEMENT OF FACTS	3

ARGUMENT:

I. THE TRIAL COURT COMMITTED STRUCTURAL ERROR WHEN IT FAILED TO SUBMIT TO THE JURY THE QUESTION OF WHETHER DEFENDANT HAD COMMITTED AN OFFENSE WITHIN A SPECIFIC TIME FRAME WHEN THAT FACT ENHANCED HIS SENTENCE BY EXPOSING HIM TO A MINIMUM MANDATORY TERM OF INCARCERATION.....	5
A. The Trial Court erred when it enhanced Defendant’s sentence to include a minimum mandatory sentence based upon its own, and not a jury’s, finding that he had committed a violent felony within 10 years of the current charge.....	7
B. The failure to conduct a jury trial to find a fact necessary for the imposition of the 5-year minimum mandatory sentence was structural error.	11
Conclusion	17
Sentence Order.....	Exhibit A
<i>State v. Lewis</i> , 2025 WL 1531489 (Del. Super. Ct. May 29, 2025).....	Exhibit B
<i>State v. Lewis</i> , 2025 WL 1780556 (Del. Super. Ct. June 27, 2025).....	Exhibit C

TABLE OF CITATIONS

Cases

<i>Alleyne v. United States</i> , 570 U.S. 99, 113 (2013)	6, 11
<i>Almendarez-Torres v. United State</i> , 523 U.S. 224 (1998).....	8, 9, 10, 11, 12
<i>Apprendi v. New Jersey</i> , 530 U.S. 466 (2000)	6, 8, 14
<i>Blakely v. Washington</i> , 542 U.S. 296 (2004).....	6
<i>Brice v. State</i> , 815 A.2d 314 (Del 2003).	14, 15
<i>Duncan v. Louisiana</i> , 391 U.S. 145 (1968)	11, 13
<i>Erlinger v. United States</i> , 602 U.S. 821 (2024).....	6, 7, 8, 9, 10, 12, 13, 15, 16
<i>Mathis v. United States</i> , 579 U.S. 500 (2016)	6
<i>Hurst v. Florida</i> , 577 U.S. 92 (2016)	15
<i>McGuinness v. State</i> , 312 A.3d 1156 (Del. 2024)	5
<i>Neder v. United States</i> , 527 U.S. 1 (1999)	12, 13
<i>Ortiz v. State</i> , 2025 WL 1149 (Del. Sept. 23, 2025)	8
<i>Rauf v. State</i> , 145 A.3d 430 (Del. 2016).....	15
<i>Ring v. Arizona</i> , 536 U.S. 584 (2002)	14, 15
<i>State v. Lewis</i> , 2025 WL 1531489 (Del. Super. Ct. May 29, 2025)	4

<i>State v. Lewis</i> , 2025 WL 1780556 (Del. Super. Ct. June 27, 2025)	4, 7, 8
<i>Suber v. State</i> , ___ A.3d ___, 2026 WL 184867 (Del. Jan. 15, 2026)	14
<i>Sullivan v. Louisiana</i> , 508 U.S. 275 (1993).....	12, 13, 15
<i>United States v. Davila</i> , 569 U.S. 597 (2013)	14
<i>United States v. Martin Linen Supply Co.</i> , 430 U.S. 564 (1977)	12, 13
<i>Washington v. Recuenco</i> , 548 U.S. 212 (2006)	12, 13

Statutes, Court and Evidentiary Rules

U.S. Const. amend V	2, 5
U.S. Const. amend VI.....	2, 5, 12
8 U.S.C. § 1326	10, 11
“Armed Career Criminal Act” 18 U.S.C. §§ 922(g) and 924(e)(1).....	8
11 Del. C. § 1448(e)(1).....	7
11 Del. C. § 1448(e)(1)(b)	1, 5, 17
11 Del. C. § 2104(f)(1)(b)	4

NATURE AND STAGE OF PROCEEDINGS

A 2-day jury trial held on April 28 and 29, 2025, resulted in a guilty verdict convicting Mashawn Lewis of Possession of a Firearm by a Person Prohibited (PFBPP). A6-7: D.I. 49. Following a May 5, 2025, office conference, the Trial Court solicited submissions from the State and Defense addressing whether Lewis's bail should be revoked and whether he should be sentenced under 11 *Del. C.* § 1448(e)(1)b, a provision requiring a minimum sentence of 5 years of imprisonment for any person who had been convicted of a violent felony within 10 years. A7: D.I. 54. Lewis opposed both applications. A7-8: D.I. 54, 58, 62. After submissions from the Parties on both questions, the Trial court revoked Lewis' bail on May 16, 2025, and granted the State's enhanced sentencing request on June 27, 2025. A7-8: D.I. 56, 57, 58, 59, 60; Exhibits B and C.

On December 19, 2025, the Trial Court sentenced Lewis pursuant to 11 *Del. C.* § 1448(e)(1)b to an aggregate sentence of 15 years of Level 5 suspended after 6 years for 6 months of Level 4 followed by 18 months of Level III. A8: D.I. 65; A287-289; Exhibit A.

Lewis filed a timely notice of appeal (AX: D.I. 66). This is his opening brief on direct appeal.

SUMMARY OF ARGUMENT

1. The Trial Court violated the Fifth and Sixth Amendments of the United States Constitution when it sentenced the Defendant to a mandatory term of incarceration based on a judicial finding that the Defendant had committed a violent felony within the past 10 years. The Constitution requires that this finding be made beyond a reasonable doubt by a jury because it was the triggering fact that made the Defendant's current conviction punishable with a 5-year minimum mandatory term of incarceration.

STATEMENT OF FACTS

The Superior Court held a jury trial on an indictment charging Mashawn Lewis with two offenses: Possession of a Firearm by a Person Prohibited (PFBPP) and Possession of Ammunition by a Person Prohibited (PABPP).¹ A6: D.I. 49; A10-11 (Indictment).

The jury heard evidence that Lewis had possessed a loaded firearm on or about February 6, 2024. It consisted of video and photographs extracted from a cellphone police had taken from Lewis when he was detained in front of an apartment house from which the police testified he was coming. A43-45, 147-148, 160-161. While Lewis was being detained, police found a handgun in the backyard of the same apartment building under an open second floor window. A45, 67-68. The State argued that the same gun found in the back was displayed and handled in photos and a video from a Facetime call on February 5, 2024, and extracted from the cellphone confiscated from Lewis and that the person depicted in them displaying and handling the gun was Lewis. A167- 170, 200-203.

Two stipulations were entered, the first one being that Lewis did not leave New Castle County, Delaware from February 4, 2024, through February 6, 2024. The second stipulation provided, in pertinent part, that “on or about February 5, 2024

¹ A third charge of Receiving a Stolen Firearm was dismissed on the State’s nolle prosequi before trial began. A6: D.I. 44.

and February 6, 2024, MASHAWN LEWIS, was prohibited by Delaware law from possessing a firearm.” A181-183, 245.

The jury found Lewis guilty of PFBPP and not guilty of PABPP. A6-7: D.I. 49; A241-242.

Some weeks after verdict, the Trial Court granted the State’s belated request to revoke Lewis’ bail² based on a judicial finding that he had previously been convicted of the violent felony of Carrying a Concealed Deadly Weapon (“CCDW”) and, as such, was subject to a 3 year minimum mandatory sentence.³ The Trial Court rejected Lewis’ claim that a jury must find the fact of the earlier conviction beyond a reasonable doubt, holding instead that this fact may be determined by a judge. Before sentencing, the Trial Court granted the State’s additional request that the Judge find that the CCDW conviction had occurred on a date within 10 years of the current PDWBPP, thereby subjecting him to a 5-year minimum mandatory sentence.⁴ Lewis opposed the State’s applications below. A246-252; 270-271.

² Pursuant to 11 *Del. C.* § 2104(f)(1), a defendant “convicted upon a verdict of guilty of any felony for which a mandatory minimum. . . period of incarceration is required, shall immediately be remanded to the custody of the Department of Corrections, and shall be immediately incarcerated until the sentence for that felony is imposed.”

³ *State v. Lewis*, 2025 WL 1531489 (Del. Super. Ct. May 29, 2025); Exhibit B.

⁴ *State v. Lewis*, 2025 WL 1780556 (Del. Super. Ct. June 27, 2025); Exhibit C.

I. THE TRIAL COURT COMMITTED STRUCTURAL ERROR WHEN IT FAILED TO SUBMIT TO THE JURY THE QUESTION OF WHETHER DEFENDANT HAD COMMITTED AN OFFENSE WITHIN A SPECIFIC TIME FRAME WHEN THAT FACT ENHANCED HIS SENTENCE BY EXPOSING HIM TO A MINIMUM MANDATORY TERM OF INCARCERATION.

Question Presented

Whether the Trial Court erred when it sentenced Defendant for the charge of Possession of a Firearm by a Person Prohibited pursuant to 11 *Del. C.* § 1448(e)(1)b., a statute requiring a minimum mandatory 5-year term of incarceration, when the issue of whether he had been convicted of prior violent felony within 10 years was not submitted to a jury for its unanimous determination beyond a reasonable doubt as required by Fifth and Sixth Amendments of the United States Constitution subsequent to the decision of the United States Supreme Court in *Erlinger v. United States*, 602 U.S. 821 (2024).⁵

Scope of Review

Questions of law and claims of constitutional violation are subject to *de novo* review.⁶

⁵ A22-25, 246-252, 270-271; Exhibits B and C.

⁶ *McGuinness v. State*, 312 A.3d 1156, 1179, 1198 (Del. 2024).

Merits of Argument

The Fifth and Sixth Amendments of the United States Constitution require that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt”⁷ Similarly, the statutory maximum sentence itself may only be increased “on the basis of the facts reflected in the jury verdict or admitted by the defendant” because a “judge’s authority to sentence derives wholly from the jury’s verdict” without that consent.⁸ Following the same rule, “[d]efining facts that increase a mandatory statutory minimum” sentence are elements that “must be submitted to the jury.”⁹ In *Erlinger v. United States*,¹⁰ the Supreme Court further limited the safe harbor in which a judge may find the fact of a conviction triggering a minimum mandatory sentence to “what crime, with what elements, the defendant was convicted of.”¹¹ Any other fact that triggers an enhanced a sentence must be proven beyond a reasonable doubt to the satisfaction of a jury.¹²

⁷ *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

⁸ *Cf. Blakely v. Washington*, 542 U.S. 296, 303-304, 306 (2004).

⁹ *Alleyne v. United States*, 570 U.S. 99, 103, 113 (2013).

¹⁰ 602 U.S. 821 (2024)

¹¹ *Erlinger*, at 840 n. 3 (“As the Court has said before and we hold again today: ‘[A] judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense.... He can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted of.’ *Mathis v. United States*, 579 U.S. 500, 511–512 [...] (2016).”)

¹² *Erlinger*, 602 U.S. at 840 n.3.

A. The Trial Court erred when it enhanced Defendant's sentence to include a minimum mandatory sentence based upon its own, and not a jury's, finding that he had committed a violent felony within 10 years of the current charge.

In this case, the Trial Court ventured out from safe harbor by not only finding the elements of a prior conviction, but also its occurrence within 10 years of the current Possession of a Firearm by a Person Prohibited (PFBPP) offense for which Lewis was being sentenced.¹³ Because the finding that subjected Lewis to the enhanced minimum mandatory 5-year term of incarceration under 11 *Del. C.* §1448(e)(1)b.¹⁴ was made by the Trial Judge and not by a unanimous jury beyond a reasonable doubt and required more than a determination of “what elements” and “what crime” Lewis had committed, Lewis’ rights were violated.¹⁵

¹³ *State v. Lewis*, 2025 WL 1780556 (Del. Super. Ct. June 27, 2025), at *3.

¹⁴ 11 *Del. C.* § 1448(e)(1) provides for minimum mandatory penalties when a person is convicted of PFBPP if his prior criminal history contains convictions for felonies: “(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm, projectile weapon, or destructive weapon while so prohibited shall receive a minimum sentence of: a. Three years at Level V, if the person has previously been convicted of a violent felony; b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.”

¹⁵ *Erlinger*, 602 U.S. at 840 n.3.

The Trial Court relied heavily on its characterization of the 1998 Supreme Court case of *Almendarez-Torres v. United States*¹⁶ as being “untouched” by *Erlinger*.¹⁷ But that characterization overstates the matter. While it is true that the former case “persists” narrowly,¹⁸ its status as good law must be tempered due to the “significant criticism” with which it has been assailed.¹⁹ Its erosion as authority is because the case is “‘at best an exceptional departure’ from ‘historic practice.’”²⁰ At worst, it is long overdue being overruled with the majority in *Erlinger* lamenting that “no one. . . [had] asked [them] to revisit *Almendarez-Torres*.”²¹

While the *Erlinger* Court noted that the separate occasions analysis required for enhanced sentencing under the Armed Career Criminal Act²² was a “fact-laden task” and, as such, must be determined by a jury beyond a reasonable doubt, it was not the complexity of the fact to be found that mattered so much as its substance.

¹⁶ 523 U.S. 224 (1998).

¹⁷ *State v. Lewis*, 2025 WL 1780556 (Del. Super. Ct. June 27, 2025), at *1.

¹⁸ *Erlinger*, 603 U.S. at 838.

¹⁹ *See Ortiz v. State*, 2025 WL 1149 (Del. Sept. 23, 2025), at *2 n.15.

²⁰ *Erlinger*, 603 U.S. at 837, quoting *Apprendi*, 530 U.S. at 487.

²¹ *Erlinger*, 603 U.S. at 838.

²² 18 U.S.C. § 924(e)(1) provides that “[i]n the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

The Court made this point explicitly by noting that just because a sentencing judge may “consult” a “limited set of documents” and consider them in sentencing does not mean they may use them beyond the “limited function of determining the fact of the triggering conviction and the then-existing elements of that offense.”²³ The Supreme Court majority unambiguously disagreed with court-appointed *amicus* that a judge may in addition to finding the elements of a charge also find the date on which those elements occurred:

If *Almendarez-Torres* permits a judge to find what crime, with what elements, the defendant was convicted of, ***amicus* reasons, that necessarily implies a judge may also find the jurisdiction in which the underlying offense occurred and the date it happened.** And, *amicus* continues, in at least some (but admittedly not all) cases, knowing those facts will make the occasions inquiry so straightforward that sending it to a jury would be pointlessly inefficient.

Again, we disagree. To conduct the narrow inquiry *Almendarez-Torres* authorizes, a court may need to know the jurisdiction in which the defendant's crime occurred and its date in order to ascertain what legal elements the government had to prove to secure a conviction in that place at that time. And to answer those questions, a sentencing court may sometimes consult a restricted set of materials, often called Shepard documents, that include judicial records, plea agreements, and colloquies between a judge and the defendant.

None of that, however, means that a court may use *Shepard* documents or any other materials for any other purpose. To ensure compliance with the Fifth and Sixth Amendments, **a sentencing judge may use the information he gleans from *Shepard* documents for the limited function of determining the fact of a prior conviction and the then-existing elements of that offense. No more is allowed.**²⁴

²³ *Id.* at 839 (internal quotations omitted).

²⁴ *Erlinger*, 603 U.S. at 839 (cleaned up) (bold added for emphasis).

In this case, the Trial Court did do more. It found not only the existence of a violent felony qualifying Lewis for mandatory sentencing but also that it occurred on a specific date within 10 years that would require him to serve a 5-year minimum mandatory sentence. This the Supreme Court specifically disagreed a trial judge may constitutionally do.²⁵

As Lewis argued below, he need not rely solely on the weakened state of the *Almendarez-Torres* case. An examination of the case itself shows its narrow holding on the facts before the Court render it too thin a reed to support either the State's argument or the Trial Court's holding:

[T]he . . . Court went out of its way to make clear that it was addressing petitioner's challenge to the sufficiency of his indictment based on his (rejected) contention that the sentencing enhancement was a separate crime (which needed to be indicted), but was "express[ing] no view" on an issue *Almendarez-Torres* did not (and likely could not have) raised – the standard of proof for finding such facts without an admission. [*Almendarez-Torres*, 523 U.S. at 227, 248.] Secondly, *Almendarez-Torres* cannot possibly be authority for sentencing judges to make findings as to the dates of a prior conviction because the recidivist sentencing provision at issue in *Almendarez-Torres* did not require – and the sentencing judge did not make – findings as to that date. "Subsection (a) of 8 U.S.C. § 1326 defines a crime. It forbids an alien who once was deported to return to the United States without special permission." [*Almendarez-Torres*, 523 U.S. at 226.] Pursuant to the associated recidivist sentencing provision, enhanced sentencing is authorized when the "removal was subsequent to a conviction for commission of an aggravated felony." [8 U.S.C. § 1326(b)(2)] Thus, in *Almandarez-Torres*, the only finding at issue was, as the Court

²⁵ *Erlinger*, 603 U.S. at 839.

described in *Alleyne v. United States*, was “the fact of a prior conviction,” [570 U.S. at 99, 111 n. 1] not its date.²⁶

In other words, *Almendarez-Torres*’ holding that a prior crime enhancing a sentence need not be charged in an indictment in the context of a case where the defendant pled guilty and admitted to the prior aggravating convictions²⁷ has but little to do with Lewis, who went to trial and put the State to its proof of all of the elements necessary to impose the minimum mandatory penalty being sought.

B. The failure to conduct a jury trial to find a fact necessary for the imposition of the 5-year minimum mandatory sentence was structural error.

In this case, Lewis was denied his right to have a jury determine the one fact necessary to raise his minimum sentence from no incarceration to at least 5 minimum mandatory years.

The Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury.” It is “fundamental to the American scheme of justice.”²⁸ The denial of a jury trial is structural error because, as the United States Supreme Court holds, its consequences

²⁶ A251 (Reply to State’s Memorandum, May 16, 2025).

²⁷ *Almendarez-Torres*, 523 U.S. at 227 (“At a hearing before the District Court, [the defendant] accepted his plea. . . admitted that he had been deported, that he had later unlawfully returned to the United States, and that the earlier deportation had taken place pursuant to three earlier convictions for aggravated felonies.”) (internal quotations omitted).

²⁸ *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

are “necessarily unquantifiable and indeterminate.”²⁹ Although a judge may acquit a defendant of a charge if the evidence is legally insufficient, a judge may not direct a verdict for the government no matter how overwhelming the evidence.³⁰ The rights to a jury verdict and to have the facts necessary for a specific crime or punishment proven beyond a reasonable doubt are interrelated. Here, the State presented no evidence to the jury that Lewis had been convicted of a felony within the 10 year time frame.

But not all cases involving constitutional violations require automatic reversal. In cases interpreting the effects of *Apprendi* on sentencing factors, the Supreme Court has held that the failure to submit them may be subject to harmless error analysis.³¹

Lewis, however, maintains that *Erlinger*’s near-demolition of *Almendarez-Torres* in favor of a jury’s fundamental role as a factfinder of elements and/or sentencing factors defining a crime or mandating a sentence supports his claim that the United States Supreme Court in its current composition would overrule or limit its earlier post-*Apprendi* precedent.

²⁹ *Sullivan v. Louisiana*, 508 U.S. 275, 281-282 (1993).

³⁰ *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-573 (1977).

³¹ *See Washington v. Recuenco*, 548 U.S. 212 (2006); *see also Neder v. United States*, 527 U.S. 1 (1999).

Why does Lewis say this? For one thing, the spirit of *Erlinger*, or more accurately, the legal philosophy that underpins it, harkens back to the language of the Court from the seminal cases of *Duncan*, *Sullivan*, and *Martin Linen Supply Co.*, by emphasizing the essential function and fundamental quality of proving elemental facts “beyond a reasonable doubt to a unanimous jury of [a defendant’s] peers regardless how overwhelming the evidence may seem to a judge.”³²

For another, 5 of the 6 justices joining Justice Gorsuch’s majority opinion simply ignored the harmless error arguments the government presented and argued before the Court, even in the face of Erlinger’s counsel’s failure to argue how his client’s facts did not fall under harmless error.³³ Only Chief Justice Roberts in his short separate concurrence³⁴ and Justice Kavanaugh’s principal dissent joined by Justices Alito, and Jackson³⁵ discuss harmless error at all, the former exhorting the circuit court to apply it, the latter bemoaning the majority’s not affirming based on it.

On the other hand, the majority, while noting that jury trials have “never been efficient”, nevertheless hold that an accused peers must unanimously resolve “straightforward factual questions under a reasonable doubt standard” adding that

³² *Erlinger*, 602 U.S. at 842.

³³ *Id.* at 860.

³⁴ *Id.* at 849-850.

³⁵ *Id.* at 859-861 (Justice Kavanah’s dissent calls out the Majority’s failure to apply both *Recuenco* and *Neder*’s harmless error holdings).

the Constitution will “not tolerate the denial of that right.”³⁶ If the Constitution is truly intolerant of a right’s denial, then its violation must be structural.

Structural errors so harm the fairness and integrity of the trial process that their prejudice is presumed.³⁷ While they are exceptional, they include denial of the counsel of choice, denial of self-representation, denial of a public trial, and failure to convey to a jury that guilt must be proved beyond a reasonable doubt.³⁸

The Delaware Supreme Court discussed the applicability of structural constitutional error and harmless error in the context of judicial and jury fact finding post-*Apprendi* in *Brice v. State*.³⁹ While rejecting a challenge to the Delaware 1991 Death Penalty statute that limited a jury’s function to making a recommendation to the judge concerning the existence of a statutory aggravating factor following the Supreme Court’s opinion in *Ring v. Arizona*⁴⁰ requiring a qualifying factor—“the functional equivalent of an element of a greater offense”—be found by a jury beyond a reasonable doubt, the Delaware Supreme Court, while expressing skepticism that *Ring*’s holding even applied, found any possible Constitutional error not to be

³⁶ *Erlinger*, 602 U.S. at 849.

³⁷ *Suber v. State*, ___ A.3d ___, 2026 WL 184867 (Del. Jan. 15, 2026), at * 6

³⁸ *United States v. Davila*, 569 U.S. 597, 611 (2013).

³⁹ *Brice v. State*, 815 A.2d 314 (Del 2003).

⁴⁰ 536 U.S. 584, 609 (2002) (holding “a sentencing judge, sitting without a jury,” not allowed “to find an aggravating circumstance necessary for the imposition of the death penalty” under *Apprendi*)

structural and, therefore, subject to harmless error.⁴¹ Then came *Hurst v. Florida*⁴² and, in its wake, this Court's opinion in *Rauf v. State*⁴³ overruling *Brice*.

Importantly, the majority in *Hurst* handled the question of harmless error in a starkly different manner than the majority in *Erlinger* by calling out that they were standing aloof from harmless error analysis for initial review by the state court.⁴⁴ As noted above, of the 6-justice *Erlinger* majority only the Chief Justice referred to harmless error and then only with a single paragraph concurrence in which (conspicuously) no other justice joined.⁴⁵ This very different handling of harmless error between *Hurst* and *Erlinger* signals precedential erosion and that the Court is now open to overruling its earlier cases⁴⁶ and holding judicial fact finding of the equivalent of an element of a crime that results in the imposition of an enhanced and minimum mandatory sentence as fundamental and structural. The language that *Sullivan v. Louisiana* and *Erlinger* have in common describing the denial of that fundamental right supports the holding Lewis urges this Court to make: that the United States Supreme Court if faced with Lewis' circumstance would find the Trial Court's failure to uphold Lewis' right to have a jury render a verdict beyond a

⁴¹ *Brice v. State*, 815 A.2d at 326-327.

⁴² 577 U.S. 92 (2016).

⁴³ 145 A.3d 430 (Del. 2016).

⁴⁴ *Hurst*, 577 U.S. at 102.

⁴⁵ *Erlinger*, 602 U.S. at 849-850.

⁴⁶ See Appellant's Opening Brief at 12, footnote 31.

reasonable doubt before imposing a minimum mandatory sentence was structural error regardless of whether or not the evidence of Lewis' conviction within 10 years would have been "straightforward," or even "overwhelming," had it been presented to the jury instead of decided by the Trial Judge.⁴⁷

⁴⁷*Cf. Erlinger*, 602 U.S. at 842 ("We do not question *amicus*' assessment that in many cases the occasions inquiry will be **straightforward**. [...] But none of that means a judge rather than a jury should make the call. [...] In a free society respectful of the individual, a criminal defendant enjoys the right to hold the government to the burden of proving its case beyond a reasonable doubt to a unanimous jury of his peers regardless of how **overwhelming** the evidence may seem to a judge.") (citations and internal quotations omitted) (bold added for emphasis).

CONCLUSION

Based on the foregoing reasons and authorities, the Appellant Mashawn Lewis' sentence pursuant to 11 *Del. C.* § 1448(e)(1)(d), requiring a 5-year minimum mandatory term of incarceration should be vacated and the case remanded for resentencing.

Respectfully submitted,

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