



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

**WILLIAM HUDSON**

**Defendant Below  
Appellant,**

**vs.**

**STATE OF DELAWARE**

**Plaintiff Below  
Appellee.**

**NO. 78, 2013**

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

**SECOND AMENDED**

**APPELLANT'S OPENING BRIEF**

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August 14, 2013

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## NATURE AND STAGE OF THE PROCEEDINGS

On April 12, 2011, William Hudson was arrested and charged with multiple counts of Rape Second Degree. A Preliminary Hearing was held and the case was sent to Superior Court on April 21, 2011.

On August 1, 2011, the same day a Motion to Dismiss for Failure to Prosecute was to be heard, Appellant was indicted on 25 Counts of Abuse of a Child by a Person in Position of Trust, a single count of Endangering the Welfare of a Child and 2 Counts of Invasion of Privacy.

The case proceeded to Trial, Appellant was found guilty on the 25 Counts of Child Abuse by a Person in Position of Trust, the single count of Endangering the Welfare of a Child and 2 Counts of Invasion of Privacy. Subsequent to the verdict and prior to sentencing the State notified the Court of an issue regarding Counts 2 through 16, Child Abuse by a Person in Position of Trust. The State suggested amending the verdict to Rape II, in response to the State's notification and request of the Court.. Defense Counsel Moved for Judgement of Acquittal on the 15 Counts of Child Abuse by a Person in Position of Trust.

The trial court withheld Decision on the Motion and sentenced Appellant on the remaining counts, not included in Motion for Judgement of

Acquittal on January 30, 2013. A Notice of Appeal was timely filed. The State on March 22, 2013 entered a nolle prosequi on the 15 counts of Child Abuse, which were the subject of the Motion for Judgement of Acquittal.

This Appellant's Opening Brief on Appeal.

## SUMMARY OF THE ARGUMENT

Presentation of evidence regarding the 15 Counts of Child Abuse subsequently dismissed by the State, were far more prejudicial than probative, to the Appellant and should not have gone to the jury.

The Evidence of the prior indicted acts if not indicted would have been subject to a D.R.E. 404 (b) analysis. Getz v. State, 538 A.2d 726 ( Del.1988 )

## STATEMENT OF FACTS

In it's Opening Remarks the State remarked there are 25 charges all identical except for the dates, the first date April 2009 and each subsequent charge changes by month through April 2011. ( A27,28)

Victim, age 16 a student at Brandywine High School was called to the witness stand by the State. ( A29 ) The victim detailed sexual activities beginning with the advent of her period. ( A30 ) That activities were primarily the acts of her father, the Appellant, William Hudson using a vibrator to stimulate her. She indicated that most incidents occurred in the basement. ( A31 ) Initially she indicated the vibrator was used with her pants on but eventually her father inserted the vibrator into her vagina. ( A32 ) The victim further stated that William Hudson had inserted his fingers into her vagina and placed her hand on his penis. ( A33,34 ). The victim further testified that the acts began in April 2009 when she was 13 and ended in April 2011 after DFS began their investigation. ( A35 )

The State called Detective Garcia . Detective Garcia executed a search warrant at the home of William Hudson. Inside a drawer the detective found lubricant and a vibrator. ( A47 )

Sarah Lindauer, a DNA analyst in the office of the Medical Examiner testified that she conducted DNA analysis on the vibrator found in the home of

William Hudson. The results were single source DNA consistent with the alleged victim and mixed source consistent with Victim and William Hudson.

( A36 - A43 )

Defense Counsel indicated to the Court that the Defendant wished to testify, the Court confirmed that fact with Defendant, but conducted no colloquy at that point, indicating the issue would be addressed the next day. The Court then instructed the jury that they had now heard all the evidence of one side of the story. You haven't heard all of the evidence and broke for the day. ( A44 )

The following day Defense Counsel informed the Court that Defendant had changed his mind and did not wish to testify. Further the Defense moved for a mistrial arguing that the Court's statement to the jury the previous day regarding the evidence was burden shifting. The defense motion was denied. ( A45 )

On February 7, 2012 the jury returned verdicts of guilty to all 29 counts in the indictment. ( A46 )

On June 15, 2012 the State notified Judge Brady of a legal issue involving 15 Counts of Sexual Abuse of a Child by a Person in a Position of Trust. In essence that crime did not exist prior to June 30, 2010. The State asked that the charges be amended to Rape Second Degree. ( A9, 10 )

Defense response to the States request was a Motion to Dismiss Count II through Count XVI. ( A24 - A26 )

The Court on January 30, 2013 sentenced defendant on Count I and Counts XVII through Count XXIX. ( A48 - A52 )

The remaining charges were nolle prosequi on March 22, 2013. ( A7 )

**TRIAL COURT ABUSED ITS DISCRETION  
IN ADMITTING EVIDENCE OF PRIOR BAD ACTS**

**QUESTION PRESENTED**

Did the probative value of Appellant's Prior Bad Acts outweigh the prejudicial effects of the evidence, when the sole issue before the Jury was did the Defendant commit the alleged acts. ( A27, 28 )

**Standard and Scope of Review**

Supreme Court reviews claims of error not raised below for plain error. Claims of plain error are reviewed de novo. Ross v. State, 801 A.2d 11 ( Del. 2002 )

**ARGUMENT**

The State chose to proceed against Hudson on the charge of Child Abuse by a Person in a Position of Trust as opposed to the initial charges of Rape Second Degree. The legal dilemma is that 15 of the indicted counts were not crimes in existence at the time they allegedly occurred. A fact divulged to the court after a finding of guilt.( A9,10 )

The State subsequently entered a nollo prosequi on the 15 counts charged in error. ( A7 ) The issue thus becomes did the evidence of the prior bad acts as

contained in the indicted 15 counts unfairly prejudice the Appellant? The trial judge was obviously unaware of the unlawful charges at the time of trial, as were defense counsel and the prosecutor. No objection to the charges moving forward were ever raised thus calling for review under the Plain Error standard.

All parties, should have known that the charges being presented by the State were improper prior to trial. The evidence may still have been presented by the State provide it survived a D.R.E. 404 (b) analysis consistent with Getz v State, 538 A.2d 726 ( Del. 1988 ) . Since the fact that the Defendant was charged with a non existent crime, was not acknowledged prior to trial, a Getz analysis was never conducted.

If charges are properly joined, there is no longer concern about prior conduct that was never proven. Wood v. State, 956 A.2d 1228 ( Del. 2008 ) . In the case at bar the charges were not properly joined.

Appellant alleges the State used the prior allegations of abuse to aide in his conviction for later alleged abuse. Prior bad acts may not be used to prove propensity to commit the offense charged. Harris v. State , 956 A.2d 1273 ( Del. 2008 )

In Gregory v. State, 616 A.2d 1198 ( Del.1992 ) this court held that the failure of the trial court to determine whether prior convictions for drug offenses

were crimes within the meaning of D.R.E. 609. Required a reversal because the evidence may have suggested guilt.

The evidence was to show he did it before he knowingly did it again. A purpose not permitted under D.R.E. 404 (b) The trial court performed no Getz analysis to determine admissibility under D.R.E. . 404 (b) and no D.R.E. 403 analysis to determine whether the probative value outweighed the prejudice to defendant.

Other sexual misconduct evidence was *not admissible* under the common plan or scheme exception. Getz v. State, 538 A.2d 726 ( Del. 1988 ) Other evidence of other crimes against the same victim by the same defendant held inadmissible. DeSheilds v. State, 706 A.2d 502 ( Del. 1998 ) Mere repetition of sexual behavior is not evidence of a plan or scheme and may not be admitted under that exception. Brett v. Berkowitz, 706 A.2d 509 ( Del.1998 )

## CONCLUSION

The inclusion of prior bad acts under the disguise of an indictment is improper. The indictment allowed alleged acts which were not defined under the criminal statute as criminal at the time of indictment, to be presented to the jury absent the safe guards afforded the Appellant under Delaware Case Law and the Rules of Evidence. The Appellant argues, the evidence permitted before the jury was far more prejudicial than probative. Appellant is entitled to a new trial.

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

STATE OF DELAWARE

VS.

WILLIAM HUDSON

Alias: WILLIAM P HUDSON

DOB: 03/24/1973

SBI: 00688958

CASE NUMBER:  
1104009274

CRIMINAL ACTION NUMBER:

IN11-10-1722  
CHILD ABUSE(F)  
IN11-10-1723  
CHILD ABUSE(F)  
IN11-10-1724  
CHILD ABUSE(F)  
IN11-10-1725  
CHILD ABUSE(F)  
IN11-10-1726  
CHILD ABUSE(F)  
IN11-10-1727  
CHILD ABUSE(F)  
IN11-10-1728  
CHILD ABUSE(F)  
IN11-10-1729  
CHILD ABUSE(F)  
IN11-10-1730  
CHILD ABUSE(F)  
IN11-10-1731  
CHILD ABUSE(F)  
IN11-10-1732  
CONT SEX ABUSE(F)  
IN11-10-1706  
ENDANG. CHILD(F)  
IN11-10-1733  
VIOLATION OF PR(F)  
IN11-10-1734  
VIOLATION OF PR(F)

COMMITMENT

SENTENCE ORDER

NOW THIS 30TH DAY OF JANUARY, 2013, IT IS THE ORDER OF THE  
COURT THAT:

The defendant is adjudged guilty of the offense(s) charged.  
The defendant is to pay the costs of prosecution and all  
statutory surcharges.

\*\*APPROVED ORDER\*\*

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February 15, 2013 08:02

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

AS TO IN11-10-1722- : TIS  
CHILD ABUSE

Effective April 12, 2011 the defendant is sentenced  
as follows:

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

AS TO IN11-10-1723- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

- For 5 year(s) supervision level 4 DOC DISCRETION

- Suspended after 6 month(s) at supervision level 4 DOC  
DISCRETION

- For 2 year(s) supervision level 3

- Hold at supervision level 5

- Until space is available at supervision level 4 DOC  
DISCRETION

AS TO IN11-10-1724- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1723 .

AS TO IN11-10-1725- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

STATE OF DELAWARE  
VS.  
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- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1724 .

AS TO IN11-10-1726- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1725 .

AS TO IN11-10-1727- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1726 .

AS TO IN11-10-1728- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5

- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1727 .

AS TO IN11-10-1729- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
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- Suspended after 10 year(s) at supervision level 5
- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1728 .

AS TO IN11-10-1730- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5
- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1729 .

AS TO IN11-10-1731- : TIS  
CHILD ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 25 year(s) at supervision level 5

- Suspended after 10 year(s) at supervision level 5
- For 2 year(s) supervision level 3

Probation is concurrent to criminal action number  
11-10-1730 .

AS TO IN11-10-1732- : TIS  
CONT SEX ABUSE

- The defendant is placed in the custody of the Department  
of Correction for 5 year(s) at supervision level 5

AS TO IN11-10-1706- : TIS  
ENDANG. CHILD

- The defendant is placed in the custody of the Department  
of Correction for 2 year(s) at supervision level 5

- Pursuant to 11 Del.C.4204(K), the level 5 shall be  
served without benefit of any form of early release.

AS TO IN11-10-1733- : TIS  
VIOLATION OF PR

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 2 year(s) at supervision level 3

Probation is concurrent to criminal action number 11-10-1731 .

AS TO IN11-10-1734- : TIS  
VIOLATION OF PR

- The defendant is placed in the custody of the Department of Correction for 2 year(s) at supervision level 5

- Suspended for 2 year(s) at supervision level 3

Probation is concurrent to criminal action number IN11-10-1733 .

SPECIAL CONDITIONS BY ORDER

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

CASE NUMBER:  
1104009274

The defendant shall not contact or attempt to contact the victim, Stephanie Hudson in any way, including but not limited to, by phone, by mail or any other means.

The defendant is to register as sex offender pursuant to statute.

The defendant is to be evaluated for and participate in Sex Offenders program while at level 5 and during probationary period, as recommended by DOC

Pursuant to 11 Del.C. 3912, the defendant shall undergo HIV testing under the direction of the Division of Public Health and the results shall be made available to the state, pursuant to statute.

Have no contact with co-defendant Heather Hudson.

Pursuant to 29 Del.C. 4713(b)(2), the defendant having been convicted of a Title 11 felony, it is a condition of the defendant's probation that the defendant shall provide a DNA sample at the time of the first meeting with the defendant's probation officer. See statute.

NOTES

Codefendant Heather Hudson ID#1104009931

The first 10 years Level 5 in CRA#IN11-10-1722-1731 is a min. mand sentence (each count)

The first 2 years Level 5 in CRA#IN11-10-1732 is a min/mand sentence.

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

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JUDGE M. JANE BRADY

\*\*APPROVED ORDER\*\*

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February 15, 2013 08:02

FINANCIAL SUMMARY

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

CASE NUMBER:  
1104009274

SENTENCE CONTINUED:

TOTAL DRUG DIVERSION FEE ORDERED	
TOTAL CIVIL PENALTY ORDERED	
TOTAL DRUG REHAB. TREAT. ED. ORDERED	
TOTAL EXTRADITION ORDERED	
TOTAL FINE AMOUNT ORDERED	
FORENSIC FINE ORDERED	1100.00
RESTITUTION ORDERED	
SHERIFF, NCCO ORDERED	
SHERIFF, KENT ORDERED	
SHERIFF, SUSSEX ORDERED	
PUBLIC DEF, FEE ORDERED	100.00
PROSECUTION FEE ORDERED	100.00
VICTIM'S COM ORDERED	
VIDEOPHONE FEE ORDERED	14.00
DELJIS FEE ORDERED	14.00
SECURITY FEE ORDERED	140.00
TRANSPORTATION SURCHARGE ORDERED	
FUND TO COMBAT VIOLENT CRIMES FEE	210.00
SENIOR TRUST FUND FEE	
<hr/>	
TOTAL	1,678.00

\*\*APPROVED ORDER\*\*

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February 15, 2013 08:02

AGGRAVATING-MITIGATING

STATE OF DELAWARE  
VS.  
WILLIAM HUDSON  
DOB: 03/24/1973  
SBI: 00688958

CASE NUMBER:  
1104009274

AGGRAVATING

OFFENSE AGAINST A CHILD  
VULNERABILITY OF VICTIM  
LACK OF REMORSE  
EXCESSIVE CRUELTY  
NEED FOR CORRECTIONAL TREATMENT