



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN HECK )  
Defendant Below- ) No. 79, 2025  
Appellant, )  
v. ) ON APPEAL FROM  
STATE OF DELAWARE ) THE SUPERIOR COURT OF THE  
Plaintiff Below- ) STATE OF DELAWARE  
Appellee. ) I.D. No. 2310001233

**APPELLANT'S CORRECTED OPENING BRIEF**

**FILING ID 76512957**

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## **NATURE OF PROCEEDINGS**

On January 29, 2024, Stephen Heck was indicted on a single count of Murder in the First Degree in relation to the death of Cynthia Amalfitano.<sup>1</sup>

In pursuance of their investigation, law enforcement executed two separate warrants to obtain Heck's cell phone location data.<sup>2</sup> The defense filed a Motion to Suppress Evidence in relation to both warrants on May 17, 2024.<sup>3</sup> The suppression hearing took place on July 12, 2024.<sup>4</sup> At the hearing, the State proffered that they intended only to use the results of the second warrant (the "Verizon CSLI Warrant") at trial.<sup>5</sup> The trial court ruled that the Motion to Suppress in relation to the first warrant (the "Cell Phone Warrant") was moot and denied the Motion as to the Verizon CSLI Warrant in a written opinion dated October 17, 2024.<sup>6</sup> The defense subsequently filed a Motion to Exclude Serology Evidence on October 25, 2024.<sup>7</sup> The trial court orally denied the motion on the third day of trial.<sup>8</sup>

Trial began on October 28, 2024 and lasted for six days.<sup>9</sup> Heck was found guilty on November 1, 2024.<sup>10</sup> He was sentenced on January 31, 2025 to

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<sup>1</sup> A1.

<sup>2</sup> A064-A089.

<sup>3</sup> A017-A031.

<sup>4</sup> A103-A227.

<sup>5</sup> A154-55.

<sup>6</sup> A239-A266.

<sup>7</sup> A267-A279.

<sup>8</sup> A751.

<sup>9</sup> A007.

<sup>10</sup> *Id.*

mandatory life imprisonment.<sup>11</sup> This is his Opening Brief in support of a timely-filed appeal.

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<sup>11</sup> See Exhibit A.

## **SUMMARY OF ARGUMENTS**

1. The trial court abused its discretion when it denied Heck's Motion to Suppress the Verizon CSLI Warrant. Law enforcement failed to provide a sufficient nexus between Heck's cell phone and Amalfitano's murder beyond the sheer fact that he was a suspect. The State heavily relied on this evidence at trial to support their theory that Heck murdered Amalfitano on the evening of September 24, 2023. Therefore, admission of this evidence was not harmless error.

2. The trial court abused its discretion when it denied Heck's Motion to Exclude Serology Evidence. The State was permitted to admit the results of two presumptive blood tests, neither of which could reliably confirm whether the tested areas did in fact contain human blood. Given the amount of blood found on and around Amalfitano's body, the admission of this unreliable evidence was not harmless error.

3. The State engaged in prosecutorial misconduct when it intentionally misrepresented the evidence on a crucial point – Amalfitano's time of death. The State in summation told the jury that forensic pathologist Doctor Gary Collins testified that Amalfitano died twelve to thirty hours before she was found when in fact Doctor Collins testified that it was twelve to twenty-four hours prior. This misrepresentation was not plain error and as a result, Heck's conviction must be reversed.

## **STATEMENT OF FACTS**

Stephen Heck and Cynthia Amalfitano spent the weekend of September 23, 2023 at Amalfitano's house in Rehoboth Beach.<sup>12</sup> On Monday September 25, 2023, Amalfitano's supervisor called 911 after Amalfitano failed to report to work that morning.<sup>13</sup> Another employee also called Amalfitano's daughter to let her know that they could not contact her mother.<sup>14</sup>

Amalfitano's sister-in-law Donna Galliani responded to Amalfitano's condominium shortly thereafter.<sup>15</sup> Galliani approached the back door of the condo and heard Amalfitano's two dogs barking from within.<sup>16</sup> Galliani knocked on the door and, having received no response, turned the doorknob to discover that the door was unlocked.<sup>17</sup> She walked into the condo and noticed that Amalfitano's beach bags were near the back door.<sup>18</sup> Galliani yelled for Amalfitano and, after she again received no response, returned to her vehicle and called 911.<sup>19</sup>

New Castle County Police ("NCCPD") Officers Trapani and Tassone arrived at the condo a few minutes later.<sup>20</sup> The officers went inside Amalfitano's condo and

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<sup>12</sup> A343-44; A359-60.

<sup>13</sup> A315-20.

<sup>14</sup> A320.

<sup>15</sup> A402; A413.

<sup>16</sup> A402.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> A403.

<sup>20</sup> A403; A413.

confirmed that no one was inside.<sup>21</sup> Officer Trapani noted that he found Amalfitano's purse inside the condo, which contained her wallet and cell phone.<sup>22</sup> Ultimately, NCCPD Detective Darryl Haines found a deceased Amalfitano in the wood line of the Skyline Drive entrance to Carousel Park on the morning of Tuesday, September 26, 2023.<sup>23</sup> Doctor Gary Collins determined that Amalfitano died twelve to twenty-four hours before she was found.<sup>24</sup> He opined that she died from asphyxiation due to prolonged strangulation.<sup>25</sup>

Location data from Heck's cell phone outlined the couple's journey from Rehoboth Beach to Wilmington on the night before Amalfitano's disappearance.<sup>26</sup> Surveillance from Amalfitano's condominium complex showed Heck's arrival on Sunday evening, notably without Amalfitano.<sup>27</sup> On Monday morning, Heck left the condo and travelled to his apartment in North Wilmington.<sup>28</sup>

Other significant evidence against Heck included testimony from Bethany Netta of the Division of Forensic Sciences and NCCPD Detective Ronald Phillips.<sup>29</sup> Both witnesses conducted independent presumptive blood tests on

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<sup>21</sup> A416.

<sup>22</sup> A418.

<sup>23</sup> A495-96.

<sup>24</sup> A740.

<sup>25</sup> A685-98.

<sup>26</sup> See A828-69.

<sup>27</sup> A326-A333.

<sup>28</sup> A863.

<sup>29</sup> See A585-600; A752-97.

potential bloodstains found in Heck's vehicle and on bags found in Amalfitano's condo and determined that most of the items indicated the presence of blood.<sup>30</sup>

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<sup>30</sup> See *Id.*

## **I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING HECK'S MOTION TO SUPPRESS IN RELATION TO THE VERIZON CSLI WARRANT.**

### **A. Question Presented**

Whether the trial court abused its discretion in denying Heck's Motion to Suppress in relation to the Verizon CSLI Warrant?<sup>31</sup>

### **B. Standard and Scope of Review**

The standard for reviewing a trial court's denial of a Motion to Suppress is an abuse of discretion.<sup>32</sup> It is considered an abuse of discretion when the court "exceeds the bounds of reason in view of the circumstances or so ignores recognized rules of law or practice" that it produces injustice.<sup>33</sup>

### **C. Argument**

Citizens of the United States are entitled to a "reasonable expectation of privacy in the whole of their physical movements."<sup>34</sup> The government's intrusion into one's movements via access to their cell phone location information is the antithesis of that expectation.<sup>35</sup> Both the Supreme Court of the United States and the Delaware Supreme Court have held that a warrant to search a person's cell

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<sup>31</sup> See A017-A018; A025-A029; see also A239-A266.

<sup>32</sup> *McAllister v. State*, 807 A.2d 1119, 1122 (Del. 2002) (citing *Liu v. State*, 628 A.2d 1376, 1379 (Del. 1993); *Alston v. State*, 554 A.2d 304, 308 (Del. 1989)).

<sup>33</sup> *State v. Hazelton*, 178 A.3d 1145, 1148 (Del. 2018) (quoting *Lilly v. State*, 649 A.2d 1055, 1059 (Del. 1994) (quoting *Firestone Tire & Rubber Co. v. Adams*, 541 A.2d 567, 571 (Del. 1988))).

<sup>34</sup> *Carpenter v. United States*, 585 U.S. 296, 297 (2018).

<sup>35</sup> See *Id.* (quoting *Riley v. California*, 573 U.S. 373 (2014)).

phone location information must be supported by probable cause that evidence of a crime will be contained therein.<sup>36</sup>

Despite the constitutional requirement that a search warrant display a “logical nexus between the items sought and the place to be searched,”<sup>37</sup> NCCPD was granted unrestrained access to Heck’s cell phone location data without having satisfied that condition. In the trial court’s opinion denying the Motion to Suppress this evidence, it held that “there [was] probable cause to believe that evidence of Amalfitano’s murder would be found in Heck’s CSLI data.”<sup>38</sup>

In *Dorsey*, the defendant owned a building in which an individual was murdered.<sup>39</sup> The police declared Dorsey to be a suspect and obtained warrants to search his two vehicles which were parked near the crime scene.<sup>40</sup> The warrants stated that the police “wish[ed] to secure potential physical evidence” from Dorsey’s vehicles and contained no other connections between the crime and the places to be searched.<sup>41</sup> Both the trial court and this Court held that the warrants were insufficient as to a logical nexus between the crime and the vehicles.<sup>42</sup>

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<sup>36</sup> *Id.*; *Riley*, 573 U.S. 373; *Hudson v. State*, 312 A.3d 615 (Del. 2024); *Taylor v. State*, 260 A.3d 602 (Del. 2021); *Buckham v. State*, 185 A.3d 1 (Del. 2018).

<sup>37</sup> *Dorsey v. State*, 761 A.2d 807, 810-11 (Del. 2000) (citing *Gardner v. State*, 567 A.2d 404, 409 (Del. 1989)).

<sup>38</sup> A265.

<sup>39</sup> *Dorsey*, 761 A.2d at 808-809.

<sup>40</sup> *Id.* at 809.

<sup>41</sup> *Id.* at 812.

<sup>42</sup> *Id.* at 812-13.

Following the rationale of *Dorsey*, law enforcement officers should not be entitled to one's historic location data simply because one owns a smartphone and is the suspect of a crime.<sup>43</sup> Given the heightened implications of privacy that come with the State's unfettered ability to track one's historic location data so long as a person is suspected of criminal wrongdoing, there must be a specific logical nexus between the accused's alleged criminal activity and their cell phone within the four corners of the warrant.<sup>44</sup> Here, there was not.

The Verizon CSLI warrant is silent to any connection between Amalfitano's murder and Heck's cell phone, other than speculation that "persons who own [] cellular phones often times have the phones on and/or near their person during the course of their travels" and "[i]t is unlikely that [Heck] would have had the opportunity to stop anywhere to leave his cell phone [and] therefore [] likely that it was with him when the incident occurred."<sup>45</sup> There were no facts within the four corners of the warrant to establish that Heck possessed a cell phone during the timeframe in which Amalfitano was killed other than conjecture. Such speculation does not rise to the level of satisfaction required to prove a sufficient nexus.<sup>46</sup> As a

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<sup>43</sup> *Id.* (holding that law enforcement could not conduct a search of the defendant's vehicle simply because the defendant was accused of a crime and that the vehicle was located near the defendant and the crime scene).

<sup>44</sup> See generally *Jensen v. State*, 482 A.2d 105, 112 (Del. 1984).

<sup>45</sup> A085 at ¶38.

<sup>46</sup> See *Dorsey*, 761 A.2d at 813 (citing *Hooks v. State*, 416 A.2d 189, 203 (Del. 1980) ("[T]his Court has framed the question was whether, based upon the specific facts alleged within the four corners of the affidavit, one would normally expect to find those items at that place").

result, the trial court's denial of the Motion to Suppress this evidence was an abuse of discretion because it exceeded the bounds of reason in view of these circumstances.

In addition, the trial court's abuse of discretion in denying Heck's Motion was not harmless error. To disregard an error made by the trial court as being harmless, there must be a ““fair assurance...that the judgment was not substantially swayed by the error.””<sup>47</sup> Such an inquiry requires a factual scrutinization of the record to evaluate ““the importance of the error and the strength of the other evidence presented at trial.””<sup>48</sup>

Here, Special Agent Fowler testified to Heck's location data from September 23 through September 25, 2023, showcasing a slideshow in which he plotted Heck's movements on a map of Delaware.<sup>49</sup> SA Swick determined that Heck and Amalfitano were in the area of Carousel Park where Amalfitano's body was found on the evening of September 23, 2023.<sup>50</sup> The State also made a point to emphasize Heck's cell phone location data in its summation, arguing that it proved Heck's

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<sup>47</sup> *Buckham v. State*, 185 A.3d at 13 (quoting *Ashley v. State*, 798 A.2d 1019, 1023 n.17 (Del. 2002) (internal citations omitted)).

<sup>48</sup> *Id.* (quoting *Van Arsdall v. State*, 524 A.2d 3, 10-11 (Del. 1987)).

<sup>49</sup> See A828-69.

<sup>50</sup> A859-62.

guilt.<sup>51</sup> As a result, there cannot be a fair assurance that Heck's conviction was not predicated upon his evidence and therefore Heck's conviction must be reversed.

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<sup>51</sup> A902 ("Then you know from Special Agent [Fowler]'s testimony, at 9:15 to 10:52, both phones are consistently in Carousel Park area not moving. An hour and 37 minutes. At around 10:52, both phones start to move towards [Amalfitano's] condo"); A904 ("You know from Special Agent Fowler, that at around 8:01 in the morning, Heck's phone begins to move north. . . . Heck's phone goes north to the area of his apartment in Jacqueline Drive"); A905 ("Detective Watson saw those phones hitting between those two towers . . . he makes a very good deduction that if that phone is sitting between two towers, it must be somewhere in between").

## **II. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING HECK'S MOTION TO EXCLUDE SEROLOGY EVIDENCE.**

### **A. Question Presented**

Whether the trial court abused its discretion in denying Heck's Motion to Exclude Serology Evidence?<sup>52</sup>

### **B. Standard and Scope of Review**

The standard for reviewing a trial court's denial of a Motion to Exclude Evidence is also an abuse of discretion.<sup>53</sup>

### **C. Argument**

For expert testimony to be admissible at trial, it must "not only be relevant but reliable."<sup>54</sup> In line with its federal counterpart and *Daubert*<sup>55</sup>, Delaware Rule of Evidence 702 provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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<sup>52</sup> See A267-A279.

<sup>53</sup> *Revel v. State*, 956 A.2d 23, 27 (Del. 2008); *Waters v. State*, 242 A.3d 778, 782 (Del. 2020) (citing *Burroughs v. State*, 988 A.2d 445, 448-49 (Del. 2010); *Secrest v. State*, 679 A.2d 58, 64 (Del. 1996)).

<sup>54</sup> *State v. McMullen*, 900 A.2d 103, 113 (Del. Super. 2006) (quoting *Minner v. American Mortg. & Guar. Co.*, 791 A.2d 826, 843 (Del. Super. 2000)).

<sup>55</sup> *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

In determining whether an area of scientific expertise is sufficiently reliable under D.R.E. 702, the Court looks to a non-exhaustive [list of] factors including:

- (1) whether the technique or scientific knowledge has been tested or can be tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error and the control standards for the technique's operation; and (4) whether the technique has gained general acceptance.<sup>56</sup>

It appears that the admissibility of presumptive blood testing has not yet been evaluated by this Court. Other jurisdictions in this country have varied opinions about its admissibility.<sup>57</sup> In *State v. Moody*, the Supreme of Connecticut held that “the result of the ‘presumptive test for blood’ had no probative value whatsoever. The test result did nothing toward establishing the likelihood of the presence of human blood [].”<sup>58</sup> The Appellate Court of Connecticut later expanded this ruling in *Downing*, holding that a presumptive blood test was admissible because (1) an eyewitness corroborated the fact that the defendant was wearing the

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<sup>56</sup> *McMullen*, 900 A.2d 103 at 113 (citing *Daubert*, 509 U.S. at 593-94).

<sup>57</sup> See *Commonwealth v. Hetzel*, 822 A.2d 747 (Pa. Super. 2003) (holding that the admissibility of presumptive blood testing will be determined on a case-by-case basis); *State v. Moody*, 573 A.2d 716 (Conn. 1990) (holding that presumptive blood tests are inadmissible), but also see *State v. Downing*, 791 A.2d 649 (Conn. App. Ct. 2002) (holding that presumptive blood tests may be admissible where the expert also relied on other evidence that blood may be present); collection of cases that admit presumptive blood tests, including *People v. Coleman*, 759 P.2d 1260 (Cal. 1988), *State v. Moseley*, 445 S.E.2d 906 (N.C. 1994), *Johnston v. State*, 497 So.2d 863 (Fla. 1986), and *Graham v. State*, 374 So.2d 929 (Ala. Crim. App. 1979); *State v. Pittman*, 18 A.3d 203 (N.J. Super. Ct. App. Div. 2011) (holding that presumptive blood test results were inadmissible where the witness could not express the accuracy of the test).

<sup>58</sup> *Moody*, 573 A.2d at 722.

blood-stained coat at the time of the murder and (2) an expert in bloodstain patterns opined that the stains were consistent with human blood spatter.<sup>59</sup>

Here over defense objection, the State was permitted to admit testimony regarding the results of two presumptive blood tests, the Reduced Phenolphthalein Assay and Bluestar latent bloodstain reagent spray.<sup>60</sup> The trial court ultimately held that the results of the presumptive blood tests go to “weight, not admissibility.”<sup>61</sup> First, Detective Phillips testified that he utilized the Bluestar spray presumptive blood test on stains he observed in Heck’s vehicle.<sup>62</sup> He acknowledged that the positive results he received would “need [to] be sent to a laboratory for a final analysis.”<sup>63</sup> Then, Division of Forensic Sciences Analyst Bethany Netta testified that the presumptive blood test she performed on the stains in Heck’s vehicle and items found within Amalfitano’s residence “indicate[d] that [blood] is possibly present” and that it “does not mean that it actually is blood.”<sup>64</sup> She further testified that confirmatory testing is required to determine whether the presumptive blood test results gave a true or a false positive, but no such testing was performed in this

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<sup>59</sup> *Downing*, 791 A.2d at 652-55.

<sup>60</sup> See A600; A751.

<sup>61</sup> A600.

<sup>62</sup> A624-35.

<sup>63</sup> A628.

<sup>64</sup> A749-50; see also A765-66.

case.<sup>65</sup> There were no other witnesses, lay or expert, that corroborated the possibility that these presumptive blood test results were accurate.

Allowing admission of these presumptive test results without sufficient confirmation or corroboration exceeded the bounds of reason in view of the circumstances because they “[did] nothing toward establishing the likelihood of the presence of human blood.”<sup>66</sup> Instead, the jury heard two witnesses testify to the results of unconfirmed and unreliable blood tests, which allowed the State to further their theory that Amalfitano’s blood was in fact found inside Heck’s vehicle and on the items found in her home.

The trial court’s error in allowing admission of the results of the presumptive blood test was not harmless. With these test results, the State argued that the stains found in Heck’s vehicle and on bags found in Amalfitano’s condo indicated the presence of blood.<sup>67</sup> Coupled with Doctor Gary Collins’ testimony regarding the gash found on Amalfitano’s head and the amount of blood found on her person, the admission of the presumptive blood test results certainly swayed the jury in favor of conviction.<sup>68</sup> Heck’s conviction must therefore be reversed because the admission of this evidence was not harmless error.

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<sup>65</sup> See *Id.*; A784-86.

<sup>66</sup> *Moody*, 573 A.2d at 628.

<sup>67</sup> See A897; A905-08.

<sup>68</sup> See A700-03; A733-35.

## **II. THE PROSECUTOR ENGAGED IN PROSECUTORIAL MISCONDUCT BY INTENTIONALLY MISREPRESENTING THE EVIDENCE IN SUMMATION.**

### **A. Question Presented**

Whether the prosecutor's intentional misrepresentation of the evidence rises to the standard of prosecutorial misconduct and requires reversal?<sup>69</sup>

### **B. Standard and Scope of Review**

First, this Court must determine whether the prosecutor's misrepresentation is prosecutorial misconduct.<sup>70</sup> If the Court so finds, and because there was no contemporaneous objection from counsel, the prosecutorial misconduct must then be reviewed for plain error.<sup>71</sup>

### **C. Argument**

For decades the Delaware Supreme Court has admonished prosecutors for failing to abide by American Bar Association's standards of representing all people, including the defendant, and seeking justice rather than convictions.<sup>72</sup> One of those recognized failures occurs when a prosecutor misrepresents the evidence presented at trial in summation.<sup>73</sup> Although a prosecutor may argue any reasonable

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<sup>69</sup> As will be discussed in the Argument section, counsel did not raise this issue at trial.

<sup>70</sup> *Hunter v. State*, 815 A.2d 730, 735 (Del. 2002).

<sup>71</sup> *Kirkley v. State*, 41 A.3d 372, 376 (Del. 2012).

<sup>72</sup> *Hunter*, 815 A.2d at 735 (citing *Bennett v. State*, 164 A.2d 442, 446 (Del. 1960); *Sexton v. State*, 397 A.2d 540, 544 (Del. 1979); *Trump v. State*, 753 A.2d 963 (Del. 2000)).

<sup>73</sup> See *Id.* (citing *Morris v. State*, 795 A.2d 653 (Del. 2002)).

inferences from the evidence in the record, they cannot misstate the evidence or mislead the jury as to the inference they may draw therefrom.<sup>74</sup>

Here, the prosecution intentionally misrepresented the testimony of forensic pathologist Dr. Gary Collins as to Amalfitano's time of death in rebuttal summation. To evaluate this claim, this Court should first examine Dr. Collins' testimony. On the third day of trial, Dr. Collins testified as follows:

State: Generally, does your office determine time of death?

Dr. Collins: So our office – what goes on the death certificate is ‘time of pronounced,’ which is when the person was found and officially pronounced dead. What we can give sometimes is an opinion as to the range of when we think this person might have been alive. But, you know, it has a lot of variables, so I would not be able to say outside of whatever time she was officially pronounced, that she was pronounced dead at ‘X’ time. It’s not that accurate.

State: In this case, were you able to provide a range?

Dr. Collins: Yes. The range would have *been somewhere between 12 to 24 hours from when she was found.*<sup>75</sup>

Prior to Dr. Collins' testimony, NCCPD Detective Haines testified that he discovered Amalfitano's body on the morning of Tuesday, September 26<sup>th</sup>.<sup>76</sup> Thus, the only reasonable inference that could be drawn from Dr. Collins' testimony was

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<sup>74</sup> *Hughes v. State*, 437 A.2d 559, 567 (Del. 1981) (citing A.B.A. Standards for CRIM. JUST. § 5.8 (1971)).

<sup>75</sup> Emphasis added. A739-40.

<sup>76</sup> A491-94 (“State: So you went to Carousel Park on the 26<sup>th</sup>? Haines: I did. State: About what time in the day? ... Haines: ... In my report, I have noted that it was approximately 0845 hours. State: So when you get there, what do you do? Haines: ... [F]rom the parking lot right alongside of the porta potty looking into that bush, I was able to see an object that, to me, appeared to be a human body. . . . State: And was that Cynthia Amalfitano? Haines: Yes”).

that Amalfitano died on Monday, September 25<sup>th</sup> between 8:45 am and 8:45 pm. Of note, the State's theory was that Heck killed Amalfitano on Sunday, September 24<sup>th</sup>.<sup>77</sup> In line with that theory and as a misstatement of Dr. Collins' testimony, the State in rebuttal summation argued that "Dr. Collins told you about the estimated time of death, *somewhere around 24 to 30 to 12 hours*, an estimate."<sup>78</sup> This was a clear misrepresentation of the evidence presented at trial. By misrepresenting Amalfitano's time of death to add an additional six hours of approximation, the State bolstered its theory that Heck killed Amalfitano on Sunday evening rather than on Monday. Despite the clear testimony by Dr. Collins, the prosecutor intentionally misstated the evidence on a critical point, lending the weight of his position and credibility to the argument he made.<sup>79</sup> This is a clear case of prosecutorial misconduct.

Having demonstrated prosecutorial misconduct, the Court must then determine whether reversal is required.<sup>80</sup> This Court will review issues not presented to the trial court where plain error requires review in the interests of

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<sup>77</sup> *Hunter*, 815 A.2d at 737.

<sup>78</sup> Emphasis added. A926.

<sup>79</sup> *Whittle v. State*, 77 A.3d 239 (Del. 2013), as corrected (Oct. 8, 2013) (warning of the "possibility that the jury will give special weight to the prosecutor's arguments, not only because of the prestige associated with the prosecutor's office, but also because of the fact-finding facilities presumably available to the office") (citing A.B.A. Standards for CRIM. JUST. § 3-5.8 (1993)).

<sup>80</sup> See *Hunter*, 815 A.2d at 737.

justice.<sup>81</sup> To find plain error, “credibility must be a central issue in a close case” and the State’s improper statements must ‘be so clear and defense counsel’s failure to object so inexcusable that a trial judge...has no reasonable alternative other than to intervene.’”<sup>82</sup> As previously mentioned, the prosecutor’s comment was a clear misstatement of the evidence. Counsel concedes that it should have objected to the prosecution’s remarks and failed to do so. As to whether “the misconduct attacked witness credibility which was indisputably a central issue,”<sup>83</sup> this set of circumstances is unique. The prosecutor misstated the testimony of the State’s own expert witness. While Dr. Collins’ credibility as an expert in forensic pathology was not a central issue in this case, his testimony as to Amalfitano’s time of death was. Accordingly, for the State to assert that Amalfitano could have died much earlier than Dr. Collins opined was to say that the evidence proved that Heck was her killer. Thus, the prosecutor’s misstatement requires reversal under the plain error standard.

<sup>81</sup> See Del. Sup. Ct. R. 8.

<sup>82</sup> *Morris v. State*, 795 A.2d at 660 (quoting *Trump*, 753 A.2d at 964).

<sup>83</sup> *Id.* at 661.

## **CONCLUSION**

Based on the facts and legal authorities set forth above, Appellant Stephen Heck respectfully requests that this Honorable Court reverse his convictions and remand this matter for a new trial.

Respectfully submitted,

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