EFiled: Aug 29 2025 02:11PM EDT
Filing ID 76968106
Case Number 79,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN HECK, Defendant Below, Appellant, v. STATE OF DELAWARE, Plaintiff Below, Appellee.	)))))))))))	No. 79, 2025 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 (No. 3839)
Deputy Attorney General
Delaware Department of Justice
Carvel Office Building
820 North French Street, 5th Floor
Wilmington, Delaware 19801
(302) 577-8500

Dated: August 29, 2025

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

CASES **PAGE**

STATUTES AND RULES

OTHER AUTHORITIES

NATURE AND STAGE OF THE PROCEEDINGS

Following his October 3, 2023 arrest for the murder of Cynthia Amalfitano, a grand jury indicted Stephen Heck in January 2024 for First-Degree Murder. (D.I. 1, 4).[1] In May 2024, Heck moved to suppress evidence obtained from multiple search warrants for lack of probable cause, including Cell Site Location Information ("CSLI") from Verizon for his cell phone and residence. (A17-89). Following the State's opposition (A90-102), and a suppression hearing (A103-227), the Superior Court requested supplemental briefing addressing this Court's holding in *Hudson v. State*.[2] (D.I. 23). In October 2024, following supplemental briefing (A229-34, A235-38), the court denied Heck's motion to suppress the residence and CSLI warrants and ruled the remainder of his motion was moot.[3] (A239-66).

In October 2024, the court granted the State's motion *in limine* to admit evidence of Heck's non-custodial statements, which were made to investigators before Amalfitano's body was found. (B5). The court also granted Heck's motion *in limine* to exclude evidence regarding his prior New Jersey and Delaware criminal cases involving Amalfitano. (B1).

---

[1] "D.I." refers to Superior Court docket items in *State v. Heck*, ID No. 2310001233.

[2] 312 A.3d 615 (Del. 2024).

[3] *State v. Heck*, 2024 WL 4521809 (Del. Super. Ct. Oct. 17, 2024).

On October 25, 2024, the day after jury selection, Heck moved to exclude serology evidence. (A267-79). The State filed its opposition. (B8). The Superior Court denied Heck's motion, but permitted Heck to conduct *voir dire* before the State's DNA analyst was permitted to testify. (A292-93, A747-51).

Following a trial that spanned October 28 through November 1, 2024, the jury found Heck guilty of First-Degree Murder. (D.I. 57). On February 20, 2025, the Superior Court sentenced Heck to life in prison. (Op. Br. Ex. A).

Heck has appealed and filed an opening brief and appendix. This is the State's Answering Brief.

SUMMARY OF THE ARGUMENT

I. DENIED. The Superior Court did not abuse its discretion by denying Heck's motion to suppress his CSLI data that investigators obtained from his cell phone provider pursuant to a search warrant. Investigators included sufficient facts within the four corners of the warrant for the issuing judge to form a reasonable belief that those records contained CSLI evidence that would implicate, or clear, Heck in the murder.

II. DENIED. The Superior Court did not abuse its discretion in admitting testimony by the State's DNA expert regarding the presumptive blood tests she performed. Nor did the court commit plain error in admitting testimony by Detective Phillips regarding similar test results.

III. DENIED. Because the prosecutor did not misstate the evidence, and Heck has not shown that the prosecutor's error, if any, was clearly prejudicial, Heck fails to establish plain error.

FACTS

On Monday morning, September 25, 2023, 63-year-old Amalfitano did not arrive for her job at Concord Preschool, where she had taught for 26 years. (A316-20). Because this was "very unusual," Amalfitano's employer called local hospitals and then called 911 to request a welfare check at Amalfitano's Pike Creek residence. (A316-20). A co-worker also notified Amalfitano's daughter, Alexandra Graney. (A320, A386).

Graney texted her mother and then asked her aunt, Sandra Saienni, if she had heard from Amalfitano. (A360, A386-87). Saienni had last spoke with Amalfitano on Saturday, September 24th, when Amalfitano said she was going to her Rehoboth beach house for the night with her boyfriend, Heck, whom she had been dating on and off for three years and who sometimes lived at her condo. (A323-24, A334, A341, A355-56, A359-60, A366, A383-84, A399). Saienni repeatedly called Amalfitano, but she got no answer. (A360). Saienni then called Heck numerous times and left him a message. (A360-61). Heck subsequently called Saienni back, but he hung up when Saienni answered. (A361). Saienni called Heck several more times, but he did not answer. (A361).

Meanwhile, Saienni asked Amalfitano's sister-in-law, Donna Galliani, to check on her at her home. (A388, A397, A402). Galliani arrived at Amalfitano's home around 10 a.m. (A402, A410). She noticed that Amalfitano's car was sitting

in the parking lot, "which was weird because she was supposed to be at work and she didn't call out." (A402). Galliani knocked on the rear door and heard Amalfitano's two dogs barking, although Amalfitano normally took them everywhere with her. (A389, A402). When no one answered, Galliani opened the unlocked rear door. (A402). Galliani saw Amalfitano's luggage inside and called Amalfitano's name. (A402-03). After not getting any response, her "gut" told her to call the police, so she left the condo to call 911 from her car. (A403).

While in her car, Galliani saw officers from the New Castle County Police Department ("NCCPD") arrive about 10:40 a.m. (A403, A413). NCCPD Officers Trapani and Tassone, who had arrived to conduct a welfare check, knocked on Amalfitano's front door, but received no answer. (A413-15, A420-22). When Tassone went to check Amalfitano's rear door, Galliani approached Tassone in the parking lot. (A403, A415-16, A422).

After speaking with Galliani, Tassone found Amalfitano's rear sliding door unlocked. (A422-23). Once Trapani joined Tassone at the back entrance, they opened the door and announced themselves. (A423). After receiving no response, Tassone and Trapani went inside and cleared the residence. (A415-16, A423). They did not notice anything unusual, except her pets were alone. (A423). Trapani subsequently located Amalfitano's purse, containing her cell phone and wallet, inside the condo's entrance. (A403-04, A417-18, A800-01).

Detective Cevallos, the chief investigating officer, subsequently arrived and interviewed Galliani while Detective Haines interviewed Graney, who had driven to her mother's home. (A375-76, A388, A406-07, A485-87). Meanwhile, Tassone asked Delaware State Police to check Amalfitano's Rehoboth residence, but they did not locate anyone there. (A425). Tassone also had dispatch check local hospitals for Amalfitano without success. (A425).

Tassone also called Heck's cell phone several times. (A424-25). Heck did not answer, so Tassone left him a message asking him to call because Amalfitano's family was concerned that they could not reach her and Amalfitano had not shown up at work. (A425). Heck did not return Tassone's calls. (A425).

Unable to reach Heck by phone, NCCPD Officer Taveras-Jerez went to Heck's residence in Wilmington about 2:34 p.m. that afternoon to inquire about Amalfitano's whereabouts. (A425-26, A456-58). When she arrived in the parking lot, Taveras-Jerez saw Heck walking to his vehicle. (A456-58). Taveras-Jerez told Heck that the police were looking for his girlfriend, Amalfitano, because no one had seen or heard from her, and asked him if he had any information since he had spent the weekend with her. (A456-61; State's Exhibit 28). Heck, who was "shivering, shaking[,] [s]eemed a little nervous," and had scratches on his upper forearm and forehead, was uncooperative and told Taveras-Jerez that Amalfitano was not his girlfriend. (A458-64; State's Exhibit 28; A807). When asked about the last time he

heard from Amalfitano or saw her in person, Heck responded, "My lawyer's instructed me not to talk to you about this." (A458-64; State's Exhibit 28; A807). Heck also told Taveras-Jerez Amalfitano had a history of disappearing. (A458-64; State's Exhibit 28).

That same day (September 25th), officers obtained surveillance video from Amalfitano's neighbor capturing the rear area around Amalfitano's Pike Creek condo, Amalfitano's main entry and exit path. (A325-31, A424; State's Exhibit 1). The footage showed Amalfitano's vehicle parked behind her condo on September 23rd, where it remained. (A328, A370, A402; State's Exhibit 1). The video also showed Heck arriving and Amalfitano working outside that afternoon, before both left around 7:40 p.m. (A329-31, A390-91, A402-03, A407-08; State's Exhibit 1).

The video also captured Heck's gray Subaru returning the next night (Sunday, September 24th) and parking by the dumpsters at 10:54 p.m. (A331-32, A409, A813; State's Exhibit 5). It showed Heck entering the rear of Amalfitano's residence and leaving with a trash bag at 11:22 p.m. (A813-16; State's Exhibit 5). He then gets into his vehicle at 11:24 p.m., leaves, and returns six minutes later. (A816; State's Exhibit 5). Heck is then seen bringing Amalfitano's dogs inside and entering and exiting Amalfitano's condo numerous times carrying various bags. (A393-94, A816-17; State's Exhibit 5). Heck is seen several times removing items from his vehicle and placing them in the dumpster. (A489; State's Exhibit 5). At 11:45 p.m.,

Heck again enters Amalfitano's residence, carrying what appears to be a purse.[4] (A817; State's Exhibit 5). At 11:56 p.m., Heck is seen walking from his vehicle to the dumpster and then entering Amalfitano's residence. (State's Exhibit 5). The footage does not show Amalfitano ever returning home. (A818; State's Exhibit 5).

Heck does not appear on video again until about 7:40 a.m. the next morning, September 25th, when he is seen exiting Amalfitano's condo carrying several bags. (A333, A817-18; State's Exhibit 5). Heck then enters and exits Amalfitano's condo several times, carrying bags and what appears to be clothing. (State's Exhibit 5). At 7:59 a.m., Heck carries a black bag to his vehicle and another to the dumpster. (State's Exhibit 5). Immediately thereafter, Heck drives away. (A818, State's Exhibit 5).

NCCPD Detectives Garcia and Watson subsequently went to Amalfitano's Rehoboth home, but did not find anyone there or anything unusual. (A379, A467-70). They also obtained surveillance footage from Amalfitano's neighbors. (A341-44, A379, A470-72; State's Exhibit 2). The video showed Heck and Amalfitano arrive at Amalfitano's Rehoboth home in Heck's gray Subaru around 9:21 p.m. on Saturday, September 23rd. (A342-43, A391-92, A408-09, State's Exhibit 2).

[4] Amalfitano's phone, which investigators found inside the condo in her purse, connected to her home Wi-Fi at 11:46 p.m. that night. (A817-18).

The footage also showed Amalfitano doing yardwork on Sunday, September 24th at 7:12 p.m., before she and Heck placed bags and her dogs into Heck's vehicle at 7:21 p.m. (A343-44, A392, A408-09; State's Exhibit 2). Heck's vehicle then backs out of the beach house driveway at 7:25 p.m. with two people in the front seats. (A408-09; State's Exhibit 2).

Because Heck's vehicle lacked E-ZPass, investigators obtained toll plaza surveillance showing it went through the Dover toll plaza at 8:22 p.m. that night and Middletown's toll plaza about 30 minutes later, at 8:49 p.m. (A379-82, A481-83; State's Exhibit 4). The video showed Amalfitano in the passenger seat of Heck's car with one of her dogs. (A381, A410; State's Exhibits 4, 12).

As part of the investigation, Detective Watson obtained Amalfitano's CSLI and call records from noon September 24th to noon September 25th. (A379, A472-79). Watson created a digital timeline of Amalfitano's phone, starting when she left Rehoboth around 7:30 p.m. on September 24th, tracking her using cell towers to New Castle County that evening. (A474-79). Amalfitano's route home appeared direct, and her phone contacted two towers near her residence between 9:18 p.m. and 10:08 p.m. that evening. (A477-79). Amalfitano's phone connected to her home Wi-Fi about 11:46 p.m. that night, after Heck was seen returning alone to her condo at 10:54 p.m. and taking what appears to be a purse inside at 11:45 p.m. (A817-18, State's Exhibit 5). According to Watson's timeline, Amalfitano's and Heck's

whereabouts were unknown for about two hours and thirty minutes, between the time Amalfitano's phone contacted towers near her residence at 9:18 p.m. and Heck returned to Amalfitano's condo alone at 10:54 p.m.

Based on Amalfitano's CLSI data, Watson pinpointed Carousel Park as a location of interest. (A480-81, A490). About 8:45 a.m. the next morning, Tuesday, September 26th, NCCPD officers went to Carousel Park to conduct a terrain search. (A490-93). Officers quickly discovered Amalfitano's body inside the wood line near the dog park parking lot. (A494-96, A511, A540-44).

Amalfitano had bruising on her neck and arms, back injuries, head lacerations, including a three-centimeter cut, fractured ribs, facial contusions, and petechial hemorrhaging. (A700-37; State's Exhibits 46, 51, 66-70). Amalfitano was missing an earring, shoes, and her clothing was disheveled. (A707-14). Her shirt was rolled up, suggesting she had been dragged from the parking lot into the woods. (A553-54, A566, A714). A secondary scene about 80 feet away showed signs of a struggle. (A566). An earring matching one Amalfitano was wearing and a necklace pendent were found there. (A551-59; State's Exhibits 73, 76). Multiple drops of blood were on the ground and rocks. (A551-58). The ground appeared disturbed, with drag marks leading to where Amalfitano was found. (A551-66). The autopsy ruled Amalfitano's death a homicide by strangulation with multiple injuries. (A686-740).

Investigators subsequently collected a Marshall's bag containing dog items and alcohol from Amalfitano's condo near the rear door and women's sneakers. (A605-08, A799-800).

On September 26th, investigators documented that Heck had a small abrasion on his forehead, discoloration on his upper cheek, and scratches on his hands and right arm. (A578, A639-46). That day, NCCPD Detective Phillips searched Heck's vehicle, observed suspected blood inside that tested presumptively positive for human blood, and collected swabs for DNA testing. (A611-38).

Bethany Netta, a senior forensic DNA analyst at the Division of Forensic Science ("DFS"), performed additional presumptive blood testing, which indicated the presence of blood on swabs collected from Heck's vehicle, the necklace pendent, and the shoe and bag collected from Amalfitano's apartment. (A743-45, A759-70, 794, A800-03). Netta also performed DNA testing, which produced single-source profiles on swabs from the door panels, center console, pendent, and Marshall's bag, that matched Amalfitano (1 in 8 trillion probability, except Marshall's bag had 1 in 54,050,000,000 probability). (A767-68, A771-77, A794). The steering wheel and water bottle swabs produced mixed DNA profiles, which included contributions from Amalfitano and Heck. (A776-77). The shoe and additional Marshall's bag swabs had insufficient DNA for analysis. (A779-80).

Investigators obtained a search warrant for Heck's call records and CSLI from September 24th, 7:21 p.m., through September 26th, 8:45 a.m., from his provider, Verizon, on September 29th – three days after Amalfitano's body was found. (A443-44).

Using Heck's and Amalfitano's CSLI, investigators determined that, from 7:44 p.m. to 9:00 p.m. on September 24th, Amalfitano's and Heck's phones traveled north from Rehoboth in close proximity. (A848-54). Both phones were in Carousel Park from 9:15 p.m. to 10:52 p.m., when they moved toward Amalfitano's Pike Creek condo, where they remained until 8:00 a.m. the next day. (A854-63). Heck's phone then left and traveled to his Wilmington apartment. (A863).

ARGUMENT

I. 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 Heck's motion to suppress the collection of CSLI evidence from the Verizon CSLI Warrant.

Standard and Scope of Review

This Court reviews the denial of a motion to suppress evidence for an abuse of discretion.[5] The trial court's factual findings will be reversed only if they are clearly erroneous.[6] Legal and constitutional questions, except the judge's determination of probable cause, are reviewed *de novo*.[7] The judge's determination is paid "great deference" and reviewed only for whether a "substantial basis" for finding probable cause existed under the totality of the circumstances.[8]

Merits

Heck contends that the Superior Court abused its discretion by denying his motion to suppress the Verizon CSLI warrant. Here, as he did below, Heck argues

[5] *Rybicki v. State*, 119 A.3d 663, 668 (Del. 2015).

[6] *Loper v. State*, 8 A.3d 1169, 1172 (Del. 2010).

[7] *Rybicki*, 119 A.3d at 668.

[8] *Id.*

that the search warrant lacked probable cause by failing to provide a sufficient nexus between his cell phone and Amalfitano's murder beyond the fact that he owns a smartphone and was a suspect. (Opening Br. 9). Specifically, Heck asserts that, "[t]here were no facts within the four corners of the warrant to establish that [he] possessed a cell phone during the timeframe in which Amalfitano was killed other than conjecture [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." (*Id.*).

In denying Heck's suppression motion with similar claims, the Superior Court found probable cause within the four corners of the CSLI Warrant, explaining:

> In his Affidavit, Detective Cevallos states that "[o]btaining cellular timing advance location information for [Heck] on the date and time surrounding [Amalfitano's murder] *will* assist investigators in connecting him to the crime or, in the alternative, establishing a forensic alibi for him." Using Heck's CSLI data would enable investigators to compare his whereabouts with those of Amalfitano and determine the likelihood that he participated in her murder. By reciting the facts upon which suspicion is founded and describing the thing sought with particularity, the Affidavit for the CSLI Warrant satisfies the requirements set forth in 11 *Del. C.* § 2306 and 2307. In viewing the Affidavit in totality, there is probable cause to believe that evidence of Amalfitano's murder would be found in Heck's CSLI data. Accordingly, the Court finds the CSLI Warrant is lawful and need not address Heck's argument regarding the Delaware Stored

> Communications Act. The evidence obtained pursuant to the CSLI Warrant will not be suppressed.[9]

The Superior Court did not err.

A. The Fourth Amendment[10]

Under the Fourth Amendment, a search warrant may only issue upon a showing of probable cause.[11] "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."[12] 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."[13] 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."[14] Rather, the affidavit must provide sufficient facts "for a judicial officer to form a reasonable belief that an offense has been committed and

---

[9] *Heck*, 2024 WL 4521809, at *8-10.

[10] Heck does not argue that the Delaware Constitution provides greater protections than the United States Constitution and, by failing to show a distinction here, waives any such claim. *Hudson*, 312 A.3d at 630-31; *Ortiz v. State*, 869 A.2d 285, 290-91 (Del. 2005).

[11] U.S. Const. amend IV.

[12] *Valentine v. State*, 207 A.3d 566, 570 (Del. 2019).

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

[14] *Bradley v. State*, 2019 WL 446548, at *5 (Del. Feb. 4, 2019).

the property to be seized will be found in a particular place."[15] In addition, a judge "may draw reasonable inferences from the factual allegations in the affidavit."[16]

B. No Constitutional Violation

Heck contends that the trial court erred by denying his motion to suppress CSLI evidence because the affidavit fails to establish a nexus between his phone and the murder. (Opening Br. 9). He argues that the affidavit was required to contain sufficient facts to establish probable cause that a search of his phone was likely to produce evidence in the murder investigation. (*Id.*). However, because the search here was not of Heck's phone but of Verizon's records of his phone's CSLI, to support the probable cause determination in this case, the affidavit was required to contain sufficient facts from which the judge could reasonably determine there was a fair probability that those records contained CSLI evidence that would implicate Heck in the murder.[17]

As the Superior Court found, the totality of the circumstances described in the affidavit gave the judge a substantial basis to find probable cause that Verizon's

---

[15] *Id.*

[16] *Sisson*, 903 A.2d at 296.

[17] *See Johnson v. State*, 682 S.W.3d 638, 648 (Tex. App. 2024) ("To support this type of search, an affidavit need not establish a nexus between the phone and the offense, but, because we live in a society in which our phones go wherever we go, facts establishing a nexus between the phone's owner and the offense may suffice in some instances.").

records related to Heck's cell phone number would reveal CSLI evidence implicating Heck in the murder by showing his phone was located at Carousel Park at the time of the murder and near Amalfitano's phone during the murder.[18] Specifically, from the four corners of the affidavit (A80-89), the trial court knew:

- At approximately 3:15 p.m. on September 23, 2023, Amalfitano told her sister that she would be going to her Rehoboth beach house later that afternoon with her boyfriend Heck and would be returning the evening of September 24th.
- Amalfitano texted Heck's cell phone on September 23rd at 4:50 p.m., stating, "ok sweetie see you in a bit."
- Amalfitano's last digital activity was a Rehoboth Beach photo at 11:45 a.m. on September 24th.
- Surveillance video showed people resembling Heck and Amalfitano at her Rehoboth Beach home on September 24th at 7:21 p.m.
- Amalfitano was last seen placing items into a Subaru, consistent with that owned by Heck, about 7:21 p.m. on September 24th in Rehoboth Beach before the vehicle left at 7:25 p.m. with two people inside.

[18] *Carpenter v. United States*, 585 U.S. 296, 306 (2018) ("The case before us involves the [g]overnment's acquisition of wireless carrier cell-site records revealing *the location* of [*defendant's*] *cell phone* whenever it made or received calls." (emphasis added)); *Johnson*, 682 S.W.3d at 649.

- Amalfitano failed to arrive at work on September 25th, which was unusual, as Amalfitano was "very predictable" and followed "routines."
- Police determined from Amalfitano's cell phone, CSLI records for her phone, and surveillance video that, after leaving her Rehoboth home in Heck's vehicle on September 24th, Amalfitano's phone traveled in a direct route without stopping until reaching the area near Amalfitano's condo, at which point her phone contacted two towers around 9:11 p.m.
- Amalfitano's phone was in the area near where her body was found at approximately 9:11 p.m. on September 24th.
- The location of Amalfitano's phone led police to search the area of Carousel Park,[19] where they found her body on September 26th at 8:45 a.m.
- Amalfitano was strangled following a struggle and physical assault, and her body was moved approximately 75 feet.
- On or about the date of the murder, Heck had a cell phone with a particular number, and his provider was Verizon.
- "Although individuals will regularly leave their vehicles, they 'compulsively carry cell phones with them all the time."

[19] Carousel Park is located between the two towers that Amalfitano's phone contacted at 9:11 p.m. on September 24th. (A83-84).

- "Persons who own and/or possess cellular phones often times have the phones on and/or near their person during the course of their travels throughout a given day."
- Heck's vehicle took a direct path from Rehoboth to New Castle County on September 24th, and therefore it was likely that Heck had the phone with him when the murder occurred because "[i]t is unlikely that [Heck] would have had the opportunity to stop anywhere to leave his cell phone.
- Amalfitano's and Heck's whereabouts were unaccounted for between 9:11 p.m. and 10:54 p.m. on September 24th.
- Surveillance video showed Heck returning to Amalfitano's condo around 10:54 p.m. on September 24th, repeatedly entering with her dogs and a purse, exiting with bags, and disposing of items in the dumpster.
- Surveillance video did not show Amalfitano returning to her condo on September 24th.
- Amalfitano's phone connected to her home Wi-Fi at 11:46 p.m. on September 24th, after Heck arrived at her condo without her.
- Amalfitano's belongings, including her cell phone, wallet, purse, keys, and her dogs were found in her condo on September 25th.

- Heck called Amalfitano's sister the morning of September 25th, and her sister tried calling Heck back that morning.
- Before Amalfitano's body was found, Heck "advised [investigators] that he was not going to answer any questions about [Amalfitano] without consulting an attorney."
- Amalfitano and Heck had a "tumultuous" relationship, with multiple domestic abuse incidents, including incidents where Amalfitano was "afraid for her life" and Heck threatened her not to call police.
- When Heck was detained on September 26th, he possessed an iPhone 12.
- Presumptive positive results indicated the presence of blood throughout Heck's car.
- Detective Cevallos had probable cause to believe that Heck may have been involved in the murder.
- Historical cell cite location information "will" allow the police to determine if Heck and his cell phone were in the area of the murder on September 24th or, in the alternative, establish a "forensic alibi" for him.

These facts established probable cause that a logical nexus existed between the evidence sought (Verizon's historical CSLI records for Heck's cell phone

number between September 24, 2023 at 7:21 p.m. and September 26, 2023 at 8:45 a.m.), and the specified crime (Amalfitano's murder). Heck's CSLI location data from the 35 hours before Amalfitano's body was found had significant evidentiary value in this case. The information about the phone's location would tend to prove Heck's location and allow investigators to compare Heck and Amalfitano's CSLI to determine if the two devices were in the same location at or around the time of the homicide, thereby either placing Heck at the scene or supporting an alibi.[20]

[20] *See Johnson*, 382 S.W.3d at 647-49 (affidavit to search Verizon's records of defendant's phone's CSLI provided probable cause that records would reveal CSLI evidence implicating defendant in crime by showing phone was located at or near location of crime and near victim's phone during and shortly after crime); *State v. Evans*, 2025 WL 2325403, at *12-13 (Conn. Aug. 12, 2025) (finding probable cause that CSLI showing defendant's location near time of murder would reveal involvement or noninvolvement); *Commonwealth v. Hobbs*, 125 N.E.3d 59, 69 (Mass. 2019) (holding suspect's cell phone location at time of crime provides evidence of participation and can reasonably be obtained from CSLI records); *Commonwealth v. Estabrook*, 38 N.E.3d 231, 246-47 (Mass. 2015) (affidavit established probable cause that CSLI would show whether phone, which may have been used by defendant or co-defendant, was near victim's home at time of shooting and, therefore whether defendant or co-defendant was also there); *United States v. Hunt*, 718 F. App'x 328, 331-32 (6th Cir. 2017) (finding probable cause and requisite nexus for CSLI where affidavit showed phone location would corroborate informant's assertions that defendant owned phone and traveled to Chicago for drugs); *cf. State v. Moore*, 805 S.E.2d 585, 591-92 (S.C. Ct. App. 2017) (finding affidavit to search defendant's cell phone provided probable cause where affidavit stated warrant was needed to obtain information that could implicate or clear defendant); *State v. Tejeda*, 171 A.3d 983, 997-98 (R.I. 2017) (finding affidavit to search defendant's phone provided probable cause where affidavit detailed victim's death, investigation of her contacts, and thirteen texts between victim and defendant hours before her death).

Heck is also mistaken that the affidavit failed to establish the requisite nexus because there was no assertion in the affidavit that he actually used or possessed the cell phone during the timeframe in which Amalfitano was killed. Neither this Court nor the United States Supreme Court has required such a showing to satisfy the nexus requirement where the sought-after-evidence is CSLI.[21] And, other courts have rejected similar arguments and found that there is "no requirement for the state to provide facts from which a judge could find probable cause that the defendant actually used [or possessed] his cell phone around the time of the criminal activity."[22] Given the inextricable connection between people and their cell phones, the location of the cell phone itself can also be reasonably expected to be the location of the person possessing the cell phone.[23]

---

[21] *See, e.g., Carpenter*, 585 U.S. at 316-17; *Hudson*, 312 A.3d at 632.

[22] *Evans*, 2025 WL 2325403, at *12-13 & n.18 (CSLI request without direct phone-use observation does not raise same nexus concerns as accessing phone contents); *Hobbs*, 125 N.E.3d at 69-70; *Estabrook*, 38 N.E.3d at 246-47; *Hunt*, 718 F. App'x at 331-32; *cf. United States v. Christian*, 2017 WL 2274328 (E.D. Va. May 24, 2017), *aff'd*, 737 F. App'x 165 (4th Cir. 2018) (per curiam), *cert. denied*, 586 U.S. 1163 (2019) (holding no requirement for affidavit to show phone was used in crime; nexus satisfied if phone likely to provide location information about criminal activity).

[23] *See, e.g., Riley v. California*, 573 U.S. 373, 385 (2014) ("[M]odern cell phones ... are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy."); *Carpenter*, 585 U.S. at 311 ("[A] cell phone – almost a feature of human anatomy – tracks nearly exactly the movements of its owner…. [People] compulsively carry cell phones with them all the time.").

Here, the Superior Court properly found that there is a sufficient nexus between the murder and Verizon's records of Heck's CSLI. The affidavit supported the conclusions that: (1) a murder was committed at Carousel Park; (2) the detective had a strong basis for suspecting Heck; (3) Heck had a cell phone at the time of the murder; (4) the location of Heck's cell phone at the time of the murder would show whether he was involved in the crime; and (5) Verizon was in possession of data for Heck's phone that would show its location at the time of the murder. Accordingly, the Superior Court properly concluded that probable cause existed for the warrant.

The ample nexus provided in this case also distinguishes it from *Dorsey v. State*.[24] *Dorsey* involved a search of the defendant's vehicles to locate evidence of a shooting that occurred in a room in a building owned by the defendant.[25] This Court held that the warrant lacked the necessary nexus to establish probable cause because there was nothing that linked the defendant's cars to the crime.[26] This Court explained that "that someone is a suspect does not constitute probable cause to search that suspect's home or automobiles."[27] Rather, the inquiry to determine probable cause is "whether, based upon the specific facts alleged within the four corners of

[24] 761 A.2d 807 (Del. 2000).

[25] *Id.* at 808-09.

[26] *Id.* at 811-14.

[27] *Id.* at 813.

the affidavit, one would *normally* expect to find those items at that place."[28] In comparison, the affidavit here contained sufficient facts from which the judge could reasonably determine that there was a fair probability that Verizon's records contained CSLI evidence on the date and time surrounding Amalfitano's murder that would implicate, or clear, Heck in the murder.

[28] *Id.* (emphasis in original).

II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING HECK'S MOTION TO EXCLUDE SEROLOGY EVIDENCE.

Question Presented

Whether the Superior Court abused its discretion in admitting expert testimony regarding the presumptive blood test performed by DFS.

Standard and Scope of Review

This Court reviews a trial court's evidentiary rulings for abuse of discretion.[29] However, when no timely and pertinent objection is raised to arguments complained of on appeal, this Court reviews only for plain error.[30] The burden is on the defendant to demonstrate plain error.[31]

Merits

On appeal, Heck contends that the Superior Court abused its discretion by denying his Motion to Exclude Serology Evidence. (Opening Br. 12-15). He contends that the court erred in permitting the State, over his objection, to admit Phillips' and Netta's testimony regarding the results of presumptive blood tests. (*Id.*). Heck argues that admitting "these presumptive test results without sufficient

[29] *See Hofmann v. State*, 2023 WL 4221525, at *3 (Del. June 27, 2023); *Rybicki*, 119 A.3d at 672.

[30] Supr. Ct. R. 8; *Woodlin v. State*, 3 A.3d 1084, 1087 (Del. 2010).

[31] *Id.*

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.' 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." (*Id.*).

To the extent that Heck argues that the court erred in admitting Netta's expert testimony regarding the results of the Reduced Phenolphthalein Assay presumptive blood testing she conducted, his argument is unavailing. In addition, Heck only challenged Phillips' testimony below on the grounds that he was not an expert and failed to raise the instant iteration of his argument regarding the reliability of the Bluestar latent bloodstain reagent spray ("Bluestar") presumptive test Phillips used to detect the presence of blood, and thus his argument concerning the admissibility of the results of the Bluestar test is waived on appeal, unless he can show plain error.[32] He cannot, as his argument fails for the reasons below.

Because Heck failed to brief the claim he raised below about the inadmissibility of Phillips' testimony because he was not an expert, Heck has waived

[32] *See* Supr. Ct. R. 8; *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986); *Russell v. State*, 5 A.3d 622, 627 (Del. 2010).

any right to this Court's review of this claim.[33] Similarly, Heck has waived any claim that the court erred by permitting Phillips to testify regarding his use of the hexagon OBTI immunochromatographic presumptive test ("OBTI") to determine if stains were presumptively human blood for failure to brief this issue.[34] Regardless, the Superior Court did not abuse its discretion by admitting the OBTI results for the same reasons below that support the admissibility of the other presumptive blood test results. And, any testimony by any non-expert as to the presumptive test results duplicated Netta's permissible expert testimony and was therefore not prejudicial.

A. Motion to Exclude Serology Evidence and Heck's Objection to Detective Phillips' Testimony

1. Motion to Exclude Serology Evidence

After jury selection, Heck moved to exclude portions of the expert report by Netta—the State's DNA analyst—relating to the phenolphthalein presumptive blood testing that she first performed on some of the evidence submitted to her for DNA testing, and to exclude Netta's related expert opinion testimony that "blood was found on certain pieces of evidence." (A268-71). While Heck conceded that the phenolphthalein presumptive blood test had been tested, has been subjected to peer review, and has been "general[ly] accept[ed] in the forensic science community for

[33] *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); Supr. Ct. R. 14(b)(vi)(A)(3).
[34] *Id.*

use … on a preliminary basis," he contended that confirmatory testing is required to verify the presence of human blood on a piece of evidence. (A270). According to Heck, "the rate of error for this [presumptive] test is high because it notoriously renders false positives when tested on items such as potatoes, beets, and animal blood." *Id.* In the absence of confirmatory testing in this case, Heck contended that the test performed by Netta was an unreliable method of determining the presence of human blood and thus the portion of Netta's report relating to the presumptive blood test, and any associated testimony, was inadmissible. (A271).

In response, the State argued that "phenolphthalein testing remains an appropriate and well-recognized investigative tool and expert testimony concerning the results of the test are admissible under *Daubert* standards." (B11). The State noted that Netta "is a forensic scientist, who will testify that it is normal procedure in conducting DNA analysis to do a Reduced Phenolphthalein Assay on items for the presence of blood, and that it is a presumptive test, not a conclusive test." (B12).

The Superior Court addressed Heck's motion on the first day of trial and informed the parties before opening statements:

> I reviewed your papers. And at this point, while I understand the arguments, … I think that after doing the *Daubert* analysis, I think that what I'm going to do is have voir dire of the expert when the time is right. If the expert says what the State indicates she will say, then I think it goes to weight, not admissibility. So that's where my thinking is right now.

(A292-93).

2. Heck's Objection Concerning Phillips' Testimony

On the second day of trial, before Heck conducted *voir dire* of Netta, Heck told the court that the State intended to introduce testimony from Detective Phillips—the evidence technician who processed Heck's Subaru—relating to his use of Bluestar and OBTI to detect the presence of blood in Heck's vehicle. (A435-37). Heck requested that Phillips' testimony be excluded because it constituted expert testimony, and the State did not proffer Detective Phillips as an expert. (A436, A439). The State responded that it was not proffering Phillips as an expert, the testing is a technique police use nationwide, and NCCPD officers use it on a regular basis when they are looking for the presence of blood or observe unknown stains at a crime scene. (A438-40). Heck responded:

> I think the issue that I am taking with that is based on what I know about this detective and the lack of background I have in his experience in this type of testing, I wouldn't be able to cross-examine him on the potential for false positives or if the test is reliable or anything like that, which we would be able to do if it was an expert and he would be well-versed in that field.
>
> Nor can we say, "I just followed the directions on the box, it told me it was blood, so then I took it to DFS." I think giving the jury that information that this substance may be blood is problematic, and he's not an expert.

(A438-39).

The court inquired whether anyone else besides Phillips would testify that the swabs collected by Phillips were presumptive for blood, and the State responded that

Netta, the DNA analyst, would testify that when she received the swabbings from Phillips, she performed the phenolphthalein test, another presumptive blood test. (A439). The court then remarked, "So it's coming in one way or the other," assuming Netta was permitted to testify regarding the presumptive blood test, and the State responded, "Yes." (A439-40). The court subsequently ruled that Heck would be permitted to conduct *voir dire* before Phillips testified at trial. (A440). Although the State took the position that Phillips was not an expert, the court stated, "I think that [Phillips' testimony] falls into expert territory, and it probably should have been disclosed[,] [b]ut I'm going to remedy this by giving them voir dire." (A440-41).

During *voir dire*, Phillips testified that he had worked at NCCPD for over 14 years and was a crime scene detective. (A585). He graduated from Neumann University with a minor in crime scene investigation. (A586). Phillips completed 800 hours of crime scene training, including training in bloodstain recognition and analysis, Bluestar and similar presumptive blood tests, and false positives. (A586-93). Phillips had been certified since 2017 as a crime scene investigator and held certifications in collecting and identifying apparent blood. (A586-90). He explained that he does not test blood. (A588-90). He stated that he normally conducts two presumptive tests (OBTI and Bluestar) to identify human blood traces. (A588-96). He described how each test is conducted and that he followed manufacturer

directions. (A588-96). He explained that the two presumptive tests are investigative tools, and he would never call a positive result "blood until a laboratory either confirms or denies that." (A594-95, A588-90). Instead, "[i]t'll just be presumptive blood or apparent blood" or "[i]t's coming up positive." (A594-95).

Phillips also testified during *voir dire* that he processed Heck's Subaru by photographing it, swabbing areas for potential DNA, and looking for apparent blood stains. (A596-97). He observed five small-scale apparent stain patterns that appeared to be consistent with blood, which he swabbed and tested with OBTI and which were "positive presumptively for human blood." (A597). He also sprayed the vehicle with Bluestar and collected swabs from areas with a positive chemiluminescent reaction. (A598-99).

After *voir dire* concluded, Heck argued that, while Phillips was trained and had expertise in administering the OBTI and Bluestar presumptive tests, he was not qualified as an expert because he "has insufficient scientific knowledge and doesn't understand or doesn't know the scientific underpinnings based on [his] testimony." (A600). The court rejected Heck's argument, holding that "[a]s the gatekeeper, I think that's enough to let it go to the jury. I think this will be fertile ground for cross, but that goes to weight, not admissibility. I'm satisfied that he can testify as he has testified on voir dire." (A600).

Phillips subsequently testified that he processed Heck's Subaru by photographing it and swabbing five small-scale apparent bloodstain patterns, or reddish-brown stain patterns that could be consistent with blood, for potential DNA. (A611-26, A632-35). Phillips also tested those five areas with OBTI and received positive results presumptively for human blood. (A632-33). Phillips sprayed the vehicle with Bluestar to search for more apparent blood. (A624-27). He testified that multiple areas of the car, including three interior door panels, the steering wheel, center console, and front passenger floor mat, reacted with Bluestar, and he swabbed those stain patterns for possible lab analysis. (A628-37). Phillips explained both tests are only presumptive, and confirmatory tests must be performed to determine whether the samples were human blood. (A636-38). He further explained that both tests can yield false positives. (A625, A637). On cross-examination, he admitted that he could not confirm the stains' age or that they were human blood. (A638).

3. Netta

In accordance with its ruling on the first day of trial, the Superior Court permitted Heck to conduct *voir dire* before the State's DNA analyst expert, Netta, was permitted to testify at trial the next day. (A747-51). During *voir dire*, Netta said she performed the phenolphthalein test on evidence in this case. (A748-49). Netta explained that the phenolphthalein test was a presumptive or preliminary test

for blood. (A749). When asked to explain the difference between a presumptive and confirmatory test, Netta explained:

> [A] presumptive test or a preliminary test just indicates the presence of something. It does not confirm that something is actually that. So in this case, a preliminary test for blood just indicates that it's possibly present, because the test itself is reacting to the presence of heme, which is hemoglobin, which is in blood, but it is also in other items as well.
>
> So, although an item may indicate the presence of blood, that does not mean that it actually is blood. You would have to do a confirmatory test to actually confirm the presence of blood on an item.

(A749-550). Netta testified that preliminary tests can give false positives and that she could only say the tested items indicated the presence of blood, not that it was blood. (A750).

Following *voir dire*, the Superior Court permitted Netta to testify about her use of the phenolphthalein test as a presumptive test for the possible presence of blood, thereby rejecting Heck's contention that follow-up tests that confirm the presence of human blood are required. (A751).

Netta testified that she performed a preliminary test for the presence of blood using phenolphthalein on the swabs from Heck's vehicle, the crime scene, Amalfitano's condo, and the necklace pendent. (A743-45, A759-70, A800-03). Because the test can react to substances other than blood and no confirmatory test was done, Netta explained that she could only say the test "indicated" the presence of blood, not that it was confirmed. (A765-66). Netta also testified the presumptive

tests are "just an indicator for the presence of blood, not necessarily human blood." (A766).

Netta testified that presumptive blood tests are standard practice in her field and at DFS, which has been using them for over 10 years. (A766-67). She testified that DFS typically does not confirm the presence of blood unless requested, because samples indicating blood proceed to DNA analysis. (A767). She noted that blood is a "good" DNA source, and substances causing false positives (e.g., iron, rust, potatoes) do not produce human DNA profiles. (A768).

Netta testified that the phenolphthalein test indicated the presence of blood on swabs Phillips took from Heck's Subaru's three interior door panels, center console, and steering wheel. (A768-69, A794). The presence of blood was also indicated on swabs from the water bottle in the Subaru, the shoe from Amalfitano's condo, the pendant, Amalfitano's neck, and the Marshall's bag. (A769-70).

Netta tested all items indicating the presence of blood for DNA. (A767-68, A771-77). Swabs from the stains on the Subaru's door panels and center console, the pendent, and Marshall's bag's bottom produced a single source profile that matched Amalfitano's DNA. (A773-75, A794). There was a one in eight trillion probability that an unrelated individual in the general population would have the same DNA as those found on these items, except the Marshall's bag, which had a one in 54,050,000,000 probability. (A773-76). The steering wheel stain swab

produced a mixed DNA profile, consistent with two individuals, at least one of which is male, with Heck being a major contributor. (A776). The water bottle stain swabs also produced a mix DNA profile, consistent with two individuals, at least one of which is male, from which Amalfitano and Heck could be included as potential contributors. (A777). The shoe stain swabs and additional swabs of different stains on the Marshall's bag produced an insufficient amount of amplified DNA to reach any conclusions. (A779-80). Amalfitano's ankle swab produced a mixed DNA profile consistent with two individuals. (A778-79).

On cross-examination, Netta admitted she did not perform a confirmatory test to determine whether the stains were human blood. (A784). Although she stated that the test she performed is reliable as a preliminary test, she acknowledged that the preliminary test was not reliable to determine the existence of human blood. (A784). Netta also admitted that DNA can be obtained from places on the human body other than blood, and thus a positive indication in the preliminary blood test, and an indication for DNA in the same item, does not necessarily mean that the DNA is in fact blood. (A784-85, A788). She testified that DFS only uses confirmatory tests when results are questionable or specifically requested, which did not occur here. (A786).

On redirect examination, Netta testified that DFS rarely conducts confirmatory testing unless requested or when a sample indicating the presence of

blood yields no DNA profile. (A789-90). If an item indicated the presence of blood and produced a DNA profile, she does not perform confirmatory testing. (A793-94). On recross-examination, Netta confirmed she did not perform confirmatory testing on items without single-source DNA because she deemed it unnecessary. (A796-97).

B. No Error

Here, the Superior Court did abuse its discretion by concluding that the phenolphthalein presumptive blood test results were admissible under *Daubert*,[35] or commit plain error in admitting Phillips' testimony regarding the Bluestar presumptive blood test results.

In *Rodriguez v. State*, this Court summarized the function of D.R.E. 702 and the role *Daubert* plays in the admission of scientific evidence as follows:

> Delaware Rule of Evidence 702 governs the admission of expert witness testimony. 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, experience, training or education may testify thereto in the form of an opinion or otherwise. We have adopted the interpretation of Rule 702 set forth by the United States Supreme Court in *Daubert* and *Kumho Tire* for Federal Rule of Evidence 702. Thus, we recognize that the trial judge has a responsibility to "ensure that any and all scientific testimony ... is not only relevant, but reliable. *Daubert* identified four factors that the trial judge may

[35] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

> consider in exercising this gatekeeping function: testing, peer review, error rates, and 'acceptability' in the relevant scientific community.[36]

Daubert's list of factors is not "definitive,"[37] and the trial judge "must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable."[38] In performing its gatekeeping function, the court must only find that the testimony is supported by "appropriate valuation" or "good grounds."[39] The standard for reliability "is not that high" and is not equivalent to "correctness."[40] And the Advisory Committee's Note to F.R.E. 702 observes that "[a] review of caselaw after *Daubert* shows that the rejection of expert testimony is the exception rather than the rule."[41]

Here, the Superior Court properly exercised its discretion as a "gatekeeper" in admitting Netta's expert testimony concerning her presumptive test results using phenolphthalein. Heck conceded below that the test Netta employed, which is used routinely by DFS, "has been tested," is "generally accepted" by the scientific community, and has been "subjected to peer review." (A270). The *voir dire* of Netta

---

[36] *Rodriguez v. State,* 30 A.3d 764, 768-69 (Del. 2011) (citations omitted).

[37] *Bowen v. E.I. DuPont de Nemours & Co., Inc.*, 906 A.2d 787, 794-95 (Del. 2006); *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 150-51 (1999).

[38] *Id.* at 152.

[39] *Oddi v. Ford Motor Co.*, 234 F.3d 136, 144 (3d Cir. 2000) (quoting *Daubert*, 509 U.S. at 590).

[40] *Id.* at 155-56 (cleaned up).

[41] F.R.E. 702 advisory committee's note.

established that the phenolphthalein test also has a known and documented error rate, as other courts have recognized.[42] (A749-50). As Netta explained, it is not a conclusive test and is not used for that purpose. (A749-50). It can test positive for substances other than blood that also react with hemoglobin. (A749-50). The test only indicates that blood may be present. (A749-50).

Nor did the court commit plain error in exercising its gatekeeping function and admitting Phillips' testimony concerning his presumptive blood test results. Without objection, Phillips testified as to what the Bluestar and OBTI tests are, how they are administered, how to interpret the results, and that there can be false positive results. (A611-38). Heck cites no case law supporting any argument that the specific Bluestar and OBTI tests are inadmissible under *Daubert* and thus has not established plain error. Furthermore, Phillips' *voir dire* and testimony established that these tests were only presumptive for the presence of possible blood and did not confirm that the stains were in fact human blood. (A588-96, A636-38).

As the Superior Court properly recognized, the fact that the presumptive tests performed by Netta and Phillips may react positively to substances other than blood and that a confirmatory test for the presence of blood was not performed go to the evidence's weight, not its admissibility. Although this Court has not addressed the

[42] *See, e.g.*, *United States v. Fell*, 2017 WL 10809984, at *2-4 (D. Vt. Feb. 8, 2017) (admitting expert testimony concerning phenolphthalein test results, which have known and documented error rate).

admissibility of presumptive blood tests, courts in other jurisdictions have held that the results for presumptive blood tests are admissible when the jury is fully informed that it is only a presumptive test and that the test may react positively to substances other than blood.[43]

Here, the jury repeatedly heard that phenolphthalein, Bluestar, and OBTI tests were only presumptive for the presence of blood and did not confirm that the stains were in fact human blood. (A611-38, A743-97). Because Netta's and Phillips' testimony met the threshold for admissibility, it was for the jury to determine the weight to be given their testimony. The trial court gave Heck wide latitude to explore his attack on Netta's and Phillips' opinions before the jury. By probing Netta and Phillips on the limitations of their testimony, the potential of false positives, and the lack of confirmatory testing, Heck challenged the weight to be given the presumptive blood results. The Superior Court did not abuse its discretion or commit plain error in allowing the jury to consider such evidence.

---

[43] *State v. Canaan*, 964 P.2d 681, 694 (Kan. 1998) (goes to weight, not admissibility); *State v. Stenson*, 940 P.2d 1239, 1262-65 (Wash. 1997) (same); *People v. Cumbee*, 851 N.E.2d 934, 947-49 (Ill. App. Ct. 2006) (same); *Jackson v. State*, 924 So.2d 531, 546 (Miss. Ct. App. 2005); *Commonwealth v. Hetzel*, 822 A.2d 747, 761-63 (Pa. Super. Ct. 2003); *Commonwealth v. Duguay*, 720 N.E.2d 458, 462-63 (Mass. 1999); *State v. Taylor*, 298 S.W.3d 482, 500-01 (Mo. 2009); *Mackerley v. State*, 900 So.2d 662, 663-64 (Fla. Dist. Ct. App. 2005); *cf. State v. Clark*, 423 A.2d 1151 (R.I. 1980) (holding inconclusive results went to weight, not admissibility); *State v. Wyant*, 328 S.E.2d 174 (W. Va. 1985) (inability to testify whether blood was human or animal went to weight, not admissibility).

Relying on cases from other jurisdictions, many of which he did not cite below (A268-71), Heck argues that positive presumptive blood tests are inadmissible without follow-up tests that confirm the presence of human blood. (Opening Br. 13-15). These cases are distinguishable.

For example, in *State v. Pittman*, the appellate court emphasized that, in the trial court, "the limitations of the test and the possibility of false positive results" had not been "fully explained to the jury."[44] "[T]he jury was left with the clear impression that the test was conclusive, not presumptive."[45] Unlike in *Pittman*, the limitations were properly explained to the jury here.

Heck's reliance on *State v. Moody*[46] is also misplaced. In *Moody*, the Connecticut Supreme Court deemed presumptive blood tests inadmissible where they formed the *sole* basis of an expert's opinion that blood was present.[47] Here, the presumptive blood tests performed by Netta and Phillips were reinforced by DNA testing, which produced genetic profiles. DNA can only be derived from blood, saliva, semen, or other human biological material. The positive presumptive test for

[44] 18 A.3d 203, 209 (N.J. Super. Ct. App. Div. 2011)

[45] *Id.*

[46] 573 A.2d 716 (Conn. 1990).

[47] *Id.* The Connecticut Supreme Court has distinguished *Moody* and admitted presumptive blood test testimony when supported by other evidence that blood may be present. *See State v. Downing*, 791 A.2d 649 (Conn. App. Ct. 2002).

blood combined with the extraction of human DNA from those samples was evidence the jury was entitled to consider. Netta and Phillips' testimony was also supported by facts already admitted into evidence and corroborated the State's theory, which was based on CSLI and surveillance video, that Heck drove Amalfitano to Carousel Park in his Subaru, where he inflicted physical injuries that caused "heavy" bleeding when he strangled her (A734-35), and then left her bloodied body there, drove his Subaru to her condo and took her belongings inside.

The remainder of the cases relied upon by Heck are also distinguishable because they recognized that presumptive blood tests are generally acceptable.[48]

C. Any Error was Harmless

Furthermore, any error was harmless beyond a reasonable doubt because Phillips' testimony was cumulative of Netta's testimony. The record also shows that both the prosecution and defense noted the limitations of Netta's and Phillips' testimony and there was other incriminating evidence, including Heck's CSLI. Thus, any error was harmless beyond a reasonable doubt.

---

[48] *People v. Coleman*, 759 P.2d 1260, 1277 (Calif. 1998) ("[P]resumptive tests for blood are generally accepted by California courts, and have been used by criminologists and admitted into evidence in this state for over 40 years."); *State v. Moseley*, 445 S.E.2d 906, 912 (N.C. 1994) (phenolphthalein testing, which could not be confirmed with positive blood testing, relevant and admissible); *Johnston v. State*, 497 So.2d 863 (Fla. 1986) (jury properly determined value and accuracy of admittedly "presumptive" luminol blood test results); *Graham v. State*, 374 So.2d 929, 940-41 (Ala. Crim. App. 1979) (jury entitled to hear presumptive blood test evidence).

III. HECK HAS FAILED TO ESTABLISH PLAIN ERROR BECAUSE THE PROSECUTOR DID NOT MISSTATE THE EVIDENCE, AND HECK HAS NOT SHOWN THAT THE PROSECUTOR'S ERROR, IF ANY, WAS CLEARLY PREJUDICIAL.

Question Presented

Whether Heck has shown plain error by establishing both that the prosecutor misstated the evidence during summation and any such misstatement was clearly prejudicial.

Standard and Scope of Review

Where defense counsel fails to object to alleged prosecutorial misconduct at trial and the trial judge does not intervene *sua sponte*, this Court reviews the claim only for plain error.[49] This Court will first review the record *de novo* to determine whether prosecutorial misconduct actually occurred; if none occurred, the analysis ends.[50] If the Court finds that the prosecutor erred, it then applies the plain error analysis described in *Wainwright*; under that standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.[51] If the Court finds plain error, it will reverse with no further analysis, but where no plain error is found, the Court may

[49] *Baker v. State*, 906 A.2d 139, 148-50 (Del. 2006).

[50] *Id.*

[51] *Id.*

still reverse under the *Hunter* [*v. State*][52] analysis on the grounds that the error was part of a pattern of misconduct that "cast[s] doubt on the integrity of the judicial process."[53]

Merits

Heck claims that the prosecutor "intentionally misrepresented the testimony of forensic pathologist Dr. Gary Collins as to Amalfitano's time of death" when he stated, in his rebuttal summation, that "Dr. Collins told you about the estimated time of death, somewhere around 24 to 30 to 12 hours, an estimate." (Opening Br. 17). Although Dr. Collins had testified that "[t]he range would have been somewhere between 12- to 24-hours from when she was found," he also testified immediately before that remark that, "[w]hat we can give sometimes is an opinion as to the range of when we think this person might have been alive[,] [b]ut, 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." (A739-40). Because Heck did not object to the prosecutor's remark, and the trial judge did not intervene, the claim is reviewed for "plain error." And, the assessment here begins and ends at the first step as there was no prosecutorial misconduct.

[52] 815 A.2d 730 (Del. 2002).

[53] *Baker*, 906 A.2d at 150.

A prosecutor may not misstate evidence or mislead the jury as to the inferences it can draw.[54] Contrary to Heck's contention, the prosecutor's remark regarding the range Dr. Collins provided did not constitute plain error. There is no indication in the record that the prosecutor intentionally misstated or misrepresented the evidence when he said "24 to 30 to 12 hours." Rather, it appears that the prosecutor was correcting himself after he mistakenly said "30." Indeed, defense counsel's failure to object suggests that counsel believed the prosecutor's statement to be entirely proper. In any event, the thrust of the prosecutor's comment, which was made to rebut Heck's closing argument that Dr. Collins's testimony does not fit the State's theory because he "told us that based on [Amalfitano's] injuries and the condition in which she was found, she must have died 12 to 24 hours before that" (A919-20), was that Dr. Collins's "range" as to when Amalfitano might have been alive was imprecise and only an estimate. (A739-40).

Even if the Court were to determine that the prosecutor engaged in misconduct, Heck has not demonstrated plain error requiring reversal. Even if the prosecutor made a misstatement, any such misstatement was not so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial. Contrary to Heck's claim, "add[ing] an additional six hours of approximation," did

[54] *Flonnory v. State*, 893 A.2d 507, 540 (Del. 2006); *Hughes v. State*, 437 A.2d 559, 567 (Del. 1981).

not "bolster" the State's theory that Heck killed Amalfitano on Sunday evening rather than on Monday, because a 30-hour window would still not fit the State's theory that Amalfitano was killed between 9:15 and 10:52 p.m. on Sunday evening - approximately 34-35 hours before her body was found at 8:45 a.m. on Tuesday morning.

Heck can also not show plain error because the court instructed the jury – both at the beginning and end of trial – that statements made by attorneys in closing arguments are not evidence and the jurors' own recollection governs. (A256, A893, A949). Jurors are presumed to follow the trial court's instructions, and Heck offers no evidence to overcome this presumption.[55] Thus, Heck cannot clearly show manifest injustice.

Heck likewise cannot prevail under *Hunter*. The prosecutor's statements in closing were not repetitive errors that require reversal.

[55] *Smith v. State*, 2014 WL 2927349, at *4 (Del. June 25, 2014).

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: August 29, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN HECK,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 79, 2025
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
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 MS Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 9,978 words, which were counted by MS Word.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

s/ Carolyn S. Hake
Carolyn S. Hake (I.D. No. 3839)
Deputy Attorney General

DATE: August 29, 2025