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Case Number 79,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

APPELLANT'S CORRECTED REPLY BRIEF

FILING ID 77234927

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

The State relies on out-of-state case law in its argument that the search warrant for Heck's CSLI was constitutionally valid because it needed not establish a sufficient nexus between Heck's cell phone and the charged offense.[1] Instead, the State encourages this Court to hold that so long as there is sufficient probable cause to believe that Heck murdered Amalfitano contained within the affidavit, his CSLI is ripe for the taking. When in fact "[t]he constitutional requirement that there be a nexus between the crime and the place to be searched is [] enshrined in Delaware law."[2]

Contrary to the State's argument, "'the Fourth Amendment protects people, not places.'"[3] Regardless of how law enforcement decided to obtain Heck's CSLI, that data originated from his cell phone. As the State argues, so long as law enforcement directs their warrant to an individual's phone company rather than directly obtaining CSLI from that person's cell phone, it eliminates their constitutional and statutory requirement to establish a nexus between the crime and

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[1] See St. Answer. Br. at p.16 ("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") (citing *Johnson v. State*, 682 S.W.3d 638, 648 (Tex. App. 2024)).
[2] *Taylor v. State*, 260 A.3d 602, 613 (Del. 2021) (citing *Buckham v. State*, 185 A.3d 1, 16 (Del. 2018) (quoting *Sisson v. State,* 903 A.2d 288, 296 (Del. 2006); 11 *Del. C.* § 2306)).
[3] *Carpenter v. United States*, 585 U.S. 296, 304 (2018) (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)).

the phone. To allow law enforcement unfettered access to one's CSLI solely because they are the suspect of a crime in the modern age would place grave consequences upon our constitutional right to privacy. Such a back-alley approach is a direct contradiction of Delaware law.

The State also relies on *Carpenter* and *Hudson* in furtherance of their position that the police are not required to establish a nexus between a crime and the suspect's phone when obtaining CSLI from the suspect's cell phone provider.[4]

First, *Carpenter* did not deal with the nexus issue.[5] In *Carpenter*, the government obtained the defendant's CSLI via a subpoena under the federal Stored Communications Act.[6] Under the premise of the third-party doctrine, the government argued that it did not need to establish probable cause to access CSLI because the information constituted business records stored by the defendant's cell phone company.[7] The United States Supreme Court rejected the government's argument and held that "CSLI is an entirely different species of business record—

[4] St. Answer. Br. at p.22 ("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") (citing *Carpenter,* 585 U.S. at 316-17; *Hudson v. State*, 312 A.3d 615 (Del. 2024)).
[5] 585 U.S. 296 (2018).
[6] *Id*. at 301-02.
[7] *Id.* at 297.

something that implicates basic Fourth Amendment concerns about arbitrary government power much more directly than corporate tax or payroll ledgers."[8]

Next, the State cites *Hudson*, in which this Court was presented the issue of whether search warrants directed at cell phone companies for CSLI from cell towers were constitutionally valid.[9] Similarly to *Carpenter*, this Court was not presented with an issue of nexus. Here, at the conclusion of the suppression hearing in July 2024, the trial court requested briefing from the parties on whether *Hudson* was applicable in this case.[10] As Appellant argued to the trial court in his supplement brief, *Hudson* is not applicable to this case because the CSLI warrant was "'geared specifically toward [the Defendant]' and 'with no paraments on geographic location area.'"[11] Ultimately, the trial court did not rely on *Hudson* in its memorandum opinion.[12] Given that the U.S. Supreme Court was not presented with this specific issue in *Carpenter*, nor did this Court render an opinion regarding this issue in *Hudson*, it is fallacious for the State in this case to rely on these cases in this capacity.

Heck's CSLI could be neither inculpatory nor exculpatory to the investigation without first establishing a reasonable connection between the cell phone and the crime. Therefore, a nexus between the crime and his cell phone is

[8] *Id.* at 318.
[9] St. Answer. Br. p.22 (citing *Hudson*, 312 A.3d 615).
[10] See A228-A238.
[11] A231 (quoting *Hudson*, 312 A.3d at 632) (citing generally *Carpenter*, 585 U.S. 296)).
[12] See A264-A265.

constitutionally and statutorily required to satisfy the Fourth Amendment of the United States Constitution, Article I § 6 of the Delaware Constitution and 11 *Del. C.* § 2306-07. The CSLI warrant falls short of that requirement, thereby rendering it invalid.

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

The State argues that the trial court did not abuse its discretion in allowing the admission of the various presumptive blood tests performed by the Division of Forensic Science and Detective Ronald Phillips. However, as highlighted by the State, "the trial judge has a responsibility to 'ensure that any and all scientific testimony [] is not only relevant, but reliable."[13]

First, the State believes that the trial court "properly exercised its discretion as a 'gatekeeper' in admitting [Bethany] Netta's expert testimony concerning her presumptive [blood] tests."[14] The results of the Reduced Phenolphthalein Assay presumptive test conducted by Ms. Netta should not have been presented to the jury given its unreliability and high rate of error as recognized by other jurisdictions.[15]

Second, the State asserts that Appellant's failure "to raise the instant iteration of his argument regarding the reliability of the Bluestar latent bloodstain reagent spray [] presumptive test [Detective] Phillips used" ultimately results in a failure to show plain error.[16] Contrary to the State's belief, trial counsel objected to

[13] St. Answer. Br. at p. 36 (quoting *Rodriguez v. State*, 30 A.3d 764, 768-69 (Del. 2011) (internal citations omitted)).
[14] St. Answer. Br. at p. 37.
[15] See *Commonwealth v. Hetzel*, 822 A.2d 747 (Pa. Super. 2003); *State v. Moody*, 573 A.2d 716 (Conn. 1990).
[16] *Id.*

admission of Detective Phillips' testimony regarding the presumptive blood tests he performed.[17] Therefore, harmless error is the proper standard of analysis.[18]

The State's categorization of Appellant's use of *Moody* as "misplaced" is not supported by the record.[19] The State argues that "the presumptive blood tests performed by Netta and Phillips were reinforced by DNA testing, which produced genetic profiles."[20] On the contrary, the following exchange occurred during Ms. Netta's cross-examination:

> Defense Counsel: And so just because we see a positive indication in the preliminary blood test, and maybe an indication for DNA in the same item, that does not mean necessarily that that DNA is blood, right?
> Netta: Correct. I am not saying they are blood. That is not confirmed.[21]

As a result of this testimony, the presumptive blood test results "does nothing toward establishing the likelihood of the presence of human blood,"[22] even with DNA testing of the same samples.

In addition, the State adds that "any testimony by any non-expert as to the presumptive test results duplicated Netta's permissible expert testimony and was

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[17] A436 ("[Detective Phillips] was not proffered to us or given notice to us as being an expert. [] It is a Bluestar latent bloodstain reagent spray. In addition [] the same detective also used a [] hexagon OBTI immunochromatographic presumptive test for the presence of human blood . . . which has a similar argument for us.").
[18] *Williams v. State*, 98 A.3d 917, 921 (Del. 2014).
[19] See St. Answer. Br. at p. 40 (citing *Moody*, 573 A.2d 716).
[20] *Id.*
[21] A786.
[22] *Moody*, 573 A.2d at 728.

therefore not prejudicial."[23] In contrast, the duplicative nature of this unreliable evidence lends itself to the conclusion that its admission was not harmless error. Like the issue of admitting the results of the presumptive blood test performed by Ms. Netta, although more problematic given Detective Phillips' lack of qualification as an expert in blood testing, these test results were not reliable enough to warrant admission under *Daubert* standards.

[23] St. Answer. Br. at p. 27.

III. THE PROSECUTOR ENGAGED IN PROSECUTORIAL MISCONDUCT BY INTENTIONALLY MISREPRESENTING THE EVIDENCE IN SUMMATION.

The State argues that in misstating the timeframe of Amalfitano's death, the prosecutor "was correcting himself after he mistakenly said '30.'"[24] Additionally, the State attempts to insert itself into the mind of defense counsel, assuming that "counsel's failure to object suggests that counsel believed the prosecutor's statement to be entirely proper."[25] This argument is unavailing.

The state of mind of the prosecutor is not relevant to analyzing misstatements of the evidence.[26] Here, the prosecutor clearly added "30" hours to the timeframe of Amalfitano's death, which bolstered their theory that Heck murdered her on the evening of Sunday, September 24th. Amalfitano's time of death was a crucial aspect of this case, especially given the CSLI records which placed him miles away from Carousel Park during the estimated time of death opined by Dr. Collins. Regrettably, no steps were taken to mitigate the effects of the State's error. Therefore, the prosecutor's misstatement of the evidence amounted to plain error because it undoubtedly affected the outcome of the trial.

[24] St. Answer. Br. at p. 44.
[25] *Id*.
[26] See *Williams v. State*, 2014 WL 1515072 (Del. 2014); *Reyes v. State*, 315 A.3d 475 (Del. 2024).

CONCLUSION

For the reasons and upon the authorities cited herein, Heck's convictions must be reversed and remanded for a new trial.

Respectfully submitted,

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