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IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARYL BALDWIN, Defendant Below, Appellant v. STATE OF DELAWARE Plaintiff Below, Appellee.	)	No. 431, 2024

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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NATURE AND STAGE OF PROCEEDINGS

On June 18, 2023, police arrested Daryl Baldwin for crimes involving the alleged sexual assault of a child named H.A. A1: D.I. 1; A170. He was indicted for charges of Sex Offender Unlawful Sexual Conduct Against a Child, Sexual Abuse of a Child by a Person of Trust First Degree, Rape Second Degree, Rape Fourth Degree, Unlawful Sexual Contact Second Degree (3 counts), Endangering the Welfare of a Child (a felony), Possession of a Controlled or Counterfeit Controlled Substance, and Possession of Drug Paraphernalia. A1: D.I. 3; A8: D.I. 1; A13-19. Count 1, the charge of Sex Offender Unlawful Sexual Conduct against a Child, was severed as Case B from the remainder of the indictment. A3: D.I.19. Case A, the remaining 9 counts, went to a 6-day jury trial beginning on May 7, 2024. The jury returned a verdict of guilty to all charges on May 15, 2024. A5: D.I. 32. After Baldwin waived his right to a jury trial for Case B, the Trial Judge heard evidence the next day and found Baldwin guilty on May 16, 2024. A10: D.I. 15. On September 16, 2024, the Trial Judge sentenced Baldwin to an aggregate term of incarceration of 64 years and 9 months of incarceration followed by varying levels of supervision. Exhibit B. Baldwin filed a timely notice of appeal for both the Cases A and B on October 4, 2024. A6: D.I. 38; A10: D.I. 21. This is Baldwin's opening brief on direct appeal to the Supreme Court of Delaware.

SUMMARY OF ARGUMENT

1. Evidence of an unknown male's DNA found in a stain on the underwear of the underage complaining witness was wearing underwear should have been admitted into evidence because it was relevant to Baldwin's defense, and, viewed with the rest of the DNA evidence, would tend to raise a reasonable doubt that Baldwin had vaginal intercourse with H.A. The Trial Court abused its discretion by overruling Baldwin's objection that introduction of the redacted DNA Report violated the Rule of Completeness and finding the redacted part of the DNA Report of minimal probative value to Baldwin when compared to the great danger of unfair prejudice it posed to the State.

2. The Trial Court's error deprived Baldwin of a fair trial.

STATEMENT OF FACTS

At trial, the State presented a case, claiming Daryl Baldwin had sexually assaulted the 13-year-old complaining witness H.A. by forcing fellatio, vaginal sexual intercourse, digital vaginal penetration, and touching of her vagina, breasts, and buttocks. To prove the sexual acts, the State relied on the testimony of H.A.; the testimony and body-camera footage of initial responding officer Trooper Emmanuel Velez; Detective Ford's account of his investigation, his observations of and interviews with H.A., his description of the texts between H.A. and Baldwin; Sexual Assault Nurse Examiner Dawn Culp's testimony of her observations, conclusions, and H.A.'s description to Culp of what she said happened; expert testimony of H.A.'s footprint on the windshield of the car where the assault was alleged to have taken place; and DNA evidence concluding that Baldwin's DNA, as well as other inconclusive results, that were found on or in parts of H.A.

On the 4th day of trial, before the State's planned introduction of a DNA Report redacted of a conclusion that a sperm fragment and DNA of an unknown male was found in a stain on H.A.'s underwear, Baldwin objected, moving the introduction of the entire report under the rule of completeness. A362. After argument, the Court overruled the objection, finding the Rape Shield Statutes, 11 Del. C. §§ 3508 and 3509, inapplicable, but nevertheless concluded that introduction of evidence of another male's DNA on H.A.'s underwear would be unfairly

prejudicial to the State, allowing the State to introduce the redacted report into evidence. The Trial Court was concerned that the jury would conclude H.A. had engaged in prior sexual conduct and, in this way, be misled or confused as to the issues of the case. A503-509.

Testimony of H.A.

H.A. described Baldwin as the friend of an uncle who would visit over a two-year period. She was living at home with her mom, stepdad, grandmother, a different uncle, and that uncle's young son (A46), when, on June 17, 2023, Daryl Baldwin came over. At first, she could not recall when Baldwin arrived. A47. Later, she said it was 8 or 9 at night when Baldwin arrived and went into her stepdad and mom's room to cook crack. A48. She could not remember when he left. A48. She left with him, denied that she asked for permission to go with Baldwin, testifying instead that Baldwin had asked her mother for permission saying that Baldwin had children she could hang out with. A49-50. H.A. first testified that she did not know that Baldwin had children at all. Then, in response to the prosecutor telling her she had told Detective Ford she had met Baldwin's children "at least once prior," she said she remembered saying so. She testified that she could not recall telling Ford how old those children were (A50) and did not recall their ages on the stand. A51. Baldwin's car was black, and she was seated in the front passenger seat. A51. They

went to two motels in Dover where Baldwin had H.A. sit in the car and wait until he returned. Eventually, they returned to H.A.'s house, and Baldwin went into her mother and stepdad's room where the 3 adults smoked crack. A52-54. Then, H.A. and Baldwin left again, this time, she believed, to see his kids.

Instead, the two ended up near Bowers Beach, where H.A. woke up in the same car in a wooded area. A55-57. Following a break in trial, H.A. testified that Baldwin started saying things to her that she could no longer remember. Baldwin then pushed her into the back seat, took off her clothes, and touched her (using one hand because he was choking her with the other) on her arms, breasts, vagina, buttocks, and legs. She told him to stop and to get off. A61-63. He also touched her vagina and mouth with his penis. He shoved his penis in her mouth so she could not breathe. She said this happened in the front seat. A64. His weight was on her body and his head was at her feet. A65. She said this lasted about 10 minutes. She could not tell whether Baldwin ejaculated or how it ended. Then, he touched his penis on her vagina. A66. He put her in the back seat to do this and put his penis in her vagina. She described him going back and forth while she was on her stomach. This position changed when he placed on her back with her legs up in the air. A67. She did not recall how that ended, or if anything came out of Baldwin's penis. When asked how it felt, she said it felt weird and nasty. Prompted by a leading question, she admitted it caused her pain. A68-69. After more leading questions, she said

Baldwin put a finger in her vagina. A69-70. H.A. then recalled that Baldwin had kissed her when she was in the front seat. She added that Baldwin put his finger in her when she had been in the front seat. Baldwin was naked (A70) the whole time, and his clothes were off before hers were. It was 5:30 am. A71. Afterwards, Baldwin fell asleep in the back seat. She grabbed her phone and other belongings, put her clothes and shoes on, quietly closed the door, and ran down the street to call 911. A71-72.

The Prosecutor began the second day of H.A.'s direct examination by "refreshing her recollection" about things she had told Detective Ford but left out of her testimony the day before. H.A. had testified that she did not know why Baldwin and she had stopped at the hotel. When the Prosecutor asked, "Do you recall telling Detective Ford that you went to the first hotel for the defendant to purchase coke and blue baggies," H.A. answered, "Yes, ma'am." A82-83. The Prosecutor then reminded her why Baldwin went to the second hotel, telling H.A. that she had told Ford that Baldwin went there to "to sell crack to a friend." A84-86.

H.A. only slept about an hour from the time she went with Baldwin on June 17, 2023, until she went to the hospital on June 18, 2023. A100. She testified Baldwin did not consume any of the dope or drugs he obtained at the first hotel. A100-101.

Trooper Emmanuel Velez

Trooper Velez found H.A. at Whitwells Delight Road in Bowers Beach after a dispatch for the report of a sexual offense. A127-128. H.A. told him it occurred inside a black vehicle near a wood line. A129. Velez then found Baldwin in the car a quarter mile from where he met H.A. A130-131. The body-worn camera footage was published to the jury. In it, H.A. pointed out the car she had been in. A137. Velez described H.A. as very young, calm, and not crying or upset. A138. She had no issues with riding by the vehicle and pointing it out to Velez. She told him she had asked Baldwin to bring her home, but he didn't. She said Baldwin was "homeless." A139.

Detective Thomas Ford

Detective Ford, the case's lead investigator, was on call on June 18, 2023. A168-169. He was assigned to investigate the sexual assault of H.A., a 13-year-old female, and "the suspect was in police custody at Troop 3." A170. First, he went to Bayhealth Hospital Kent Campus Emergency department where H.A. was being examined and a sexual assault examination collecting DNA samples from H.A. was being performed by a forensic nurse. A171-172. After interviewing H.A., he went to Troop 3 to interview Baldwin, but Baldwin declined. By then, Ford had already spoken to H.A.'s mother, father and grandmother at Bayhealth. 171-173.

Ford testified that samples for a sexual assault suspect kit, including DNA, were taken from Baldwin and sent for testing. A173. Baldwin had been driving a black 2002 Chevrolet Monte Carlo registered in Delaware to him. A174. He knew this because had viewed the body camera footage showing that Baldwin was found in the same vehicle. A174-175.

State's Exhibit No. 6, video surveillance from the Best Western Galaxy was published to jury. A177. Detective Ford narrated it showing Baldwin getting out of a black Monte Carlo, opining that "based upon [his] training and experience" "drug transactions" were occurring (A177-179) based on the late hour, people loitering in the parking area, traffic coming to and from the lot, and the person-to-person contact through the driver and passenger doors of vehicles. A178-179.

State's Exhibit No. 7, video surveillance provided by the manager of the Kent Budget Motel, showed Baldwin, an acquaintance of his, and the 2002 Chevrolet Monte Carlo: "It's my understanding that the defendant was in that hotel room with [another person] and there's drug use happening." A180-183.

He described H.A. as "sleepy," "a little sad," and "kind of depressed": "And she actually—she appeared to be high. She was very sleepy and actually drifting out at times while I was speaking with her in the car." H.A. did not disclose that Baldwin had put his penis in her mouth or in her vagina when he spoke to her at the hospital. A193. H.A. told Ford she was "half asleep" during the sexual acts. A195.

Ford testified later that he collected H.A.'s cellphone on June 21, 2023, and entered into evidence at trial. A276-278.

Sergeant Colby Cox

Sergeant Cox, a first line supervisor in the Evidence Detection Unit at Troop 3, assisted Ford with the sexual assault kit on Baldwin, (A204), taking a penile swab (A206) and oral buccal sample from for Baldwin's DNA. A211-212. Baldwin's cellphone was collected from the car (A237), and he located a footprint on interior windshield of car. A239. He later took H.A.'s feet impression. A247-248.

Detective Terrence Smith

Detective Smith of the Delaware State Police High Tech Crimes Unit processed the mobile phones of Daryl Baldwin and H.A (A280-282), and using Cellebrite (A286), extracted threads between H.A. and "Darylz-Life" from both phones. A307, 309.

Ashleigh Haines, an FBI print examiner(A325-326), lifted a latent print from the front windshield that was H.A.'s right foot. A343-348.

The Redacted DNA Lab Report

At the beginning of the fourth day of trial, on May 13, 2024, the Prosecutor announced to the Trial Judge that she would be introducing a DNA Lab Report with redactions to which Defense Counsel objected. A362.

MS. DEWALT: And I will try to speak from memory, Your Honor.

The victim's underwear in this case was submitted for DNA testing. Initially and preliminarily there was a presence of spermatozoa.
Her underwear were tested, and following the extraction of [H.A.]'s DNA, it was not a match to the Defendant. So based on 11 Delaware Code 3509, I have redacted that because any presence -- or any indication of specific instances of sexual conduct on [H.A.]'s part are inadmissible. I have also redacted the portion that could be harmful to Mr. Baldwin that states that there was male DNA in the first place. And, so, I think that cures that issue. So just to be clear, Your Honor, I have redacted the indication that there was any spermatozoa indicated on [H.A.]'s underwear. And then I have also redacted the portion that states that that DNA belonged to an unidentified male.
THE COURT: So it wasn't simply that the sperm was inconclusive as far as whether it was sperm, it was --
MS. DEWALT: There was another profile that did not match the Defendant.
THE COURT: It was tied to a different person?
MS. DEWALT: That is correct, Your Honor.
THE COURT: And was that -- because they have a database, was that profile identified, or tied to a specific person?
MS. DEWALT: I am aware of that, Your Honor.
It just states that it belongs to Unidentified Male A, is how they phrase it.
THE COURT: Okay. Miss Brophy.
MS. BROPHY: Your Honor, I believe that an unredacted copy of the report should be what goes to the Jury. Under the Doctrine of Completeness, they should see the entire report. Further, under 3509, it prohibits the defendant from introducing any opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness's sexual conduct, or any such evidence in order to prove consent. I don't think that this falls into that category. This is a DNA result. This is not trying to elicit testimony from Miss [H.A.] of any specific sexual conduct. It is circumstantial evidence that was found in the DNA that was tested. I think it is relevant in the case, that there was other DNA that was not my client's. And, again, I think the whole picture needs to come in.
MS. DEWALT: Your Honor, may I respond?
THE COURT: Yes. Go ahead.
MS. DEWALT: Your Honor, 3509 relates to the admissibility of evidence in general, not just evidence presented by the Defendant.

> Number One, I think it is much more prejudicial to Miss [H.A.]. Number Two, this evidence would go to a specific instance of [H.A.]'s sexual conduct. And it is black and white under the statute that that doesn't come in. I think that admitting any indication of sexual conduct of Miss [H.A.] could lead the jury to make a prejudicial conclusion about that. A362-366.

No decision was made, and the trial resumed.

Dawn Culp

Nurse Culp, a Sexual Assault and Forensic Nurse Examiner, examined H.A. on June 18, 2023. A379, A381, A410. H.A. had no injuries other than a faint contusion. A417. She testified that H.A. had urinated since the assault. A420. She observed there was no trauma to H.A.'s vagina, but that is not uncommon (A425), saying, in fact, it is uncommon to see injuries. A426. She collected underpants, an oral swab, hair combings, vaginal swabs, perineal swabs, medial thigh swabs—the inner side of the thighs--, a buccal swab, face, swab, neck swab (A426), left and right breast, abdomen, lower back, and buttocks" swabs. A427. H.A.'s urine screen tested positive for fentanyl and cocaine. A438.

Additional Argument about the DNA Report

> THE COURT: What is the defense purpose of admitting this information?
> MS. BROPHY: Your Honor, I believe under the Doctrine of Completeness that the entire thing needs to come in; the Jury needs to see the whole picture. That includes the entire report.
> THE COURT: No other -- go ahead.
> MS. BROPHY: I also, not as a reason that it comes in but as a counter to the State's argument to keep it out, I maintain this, in and of itself, is not evidence of a specific sexual act on the part the complaining witness. This is just circumstantial evidence that there was a swab taken from her underwear that

tested positive for an unknown male's DNA. It is not, in and of itself, evidence of a sexual act.
THE COURT: Okay. Anything further that you wish to say, Miss Brophy, regarding the purpose of this evidence?
MS. BROPHY: Not at this time. A492-493

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MS. DEWALT: Your Honor, I don't know how you can say that this is isn't an indication of a specific sexual instance. It may not be saying this victim had sex with this person on this date, but it certainly alludes to the fact that she had sexual contact with another male individual. How else would it have gotten there? I think it is highly prejudicial to the victim. I think it is an effort to make her look promiscuous. It is an effort to confuse the Jury. And this evidence doesn't come in. It never does under 3509. A494.

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But again, Your Honor, I don't think there is any purpose other than to make the victim look bad or show that she is promiscuous. And, again, I think it is highly prejudicial to her, and it is -- that specific information is irrelevant.
THE COURT: Miss Brophy, anything further?
MS. BROPHY: [ ] I am not trying to have it introduced to show any promiscuity. It is in the report. It is what it is. And I think that all of the evidence should be -- all of the DNA that has been testified to that has been collected, all of its results need to go to the jury. Again, I maintain it may be – to use Miss DeWalt's word -- an indication of sexual activity. It is not in and of itself evidence of a specific sexual act. There is transfer principles of DNA. There are studies that have been shown that DNA can transfer in the wash. There has been testimony that she lives in the same household with males. There are many explanations that can be offered as to why male DNA is on her underwear. It is not offered in any way to show promiscuity on the part of the complaining witness. A 495-496.

Trial Court Overrules Baldwin and Admits Redacted DNA Report

THE COURT: Counsel, I am prepared to make a ruling on the issue that was pending, so let me do that first. So the State proposes to submit a DNA laboratory report in which the State proposes to redact certain information that sperm of a male other than the Defendant was found on the underwear of the State's complaining witness.

Now in fairness, I believe, the Defense knew that the State planned to redact this information as of the final case review on May the 1st. Even though it may not have been explicitly stated that these redactions are going to be made, in fairness evaluating what has been told to me, the Defense knew as of May 1st that the State intended to redact this information or not present this information, and, also, even though the Defense did not receive the actual redacted version of the report until May 13th. But I believe the Defense knew this as of May 1st. In addition, I would point out that the Defense received the unredacted DNA laboratory report in December 2023, and, therefore, knew at that time that the sperm of another male had been found on the Defendant's underwear.

Now, there are two, we will call them Rape Shield statutes in Delaware. One is 11 Delaware Code Section 3508. One is 11 Delaware Code Section 3509. 11 Delaware Code Section 3508 allows evidence of prior sexual conduct of the complaining witness to be admitted to attack the credibility of the complaining witness. But certain procedural steps have to be followed there by the defendant, including filing of a motion and an affidavit, and that has not been done here. And there has been no indication by the Defense that they would wish to submit this evidence to attack the credibility of the complaining witness.

As to 11 Delaware Code Section 3509, evidence of prior sexual conduct by the complaining witness may be admitted in order to prove consent, and there has been no indication by the Defense that they intend to, or would like to, have this information submitted for that purpose. So, in the Court's view, the Rape Shield statutes are really not applicable here.

So it becomes a Rule 403 analysis; Delaware Rule of Evidence 403. Now the Defense is requesting that the unredacted version of the State's DNA report be offered, not to show prior sexual conduct of the complaining witness at all, but only under the rule of completeness. So that, generally, is a jury is to see an entire document, if that is possible. Now, according to the Defendant, the presence of another male's sperm on the complaining witness's underwear does not show prior sexual conduct or prior sexual acts by the complaining witness as there could be a host of other reasons why another male's DNA would be on her underwear, such as nonsexual transfer occurring in a home where she resided with other adult males other than the Defendant.

Now, accepting that argument of the Defendant, the probative value of this evidence is then reduced, and maybe even becomes minimal. And, in addition, the Court finds that there is a very real danger that, should the Jury be presented with this information, they could conclude that this is evidence of the complaining witness's engaging in prior sexual conduct; and, therefore,

there is a significant danger of unfair prejudice to the State, and a significant danger of confusing the issues, and a significant danger of misleading the Jury. The Court, therefore, finds that the danger of all of these substantially outweighs any probative value of this evidence and, therefore, the information will remain redacted.

Now, I will grant the Defense request that the entire line of – the deleted, not just -- I assume it was the word "positive" -- I think it was, yes -- but not just the word "positive." So when we look at the first page of the report, under Preliminary Analysis Results Part One under the fourth line of information, that entire line would be redacted, not simply the word "positive." So I will grant the Defendant's request in that respect. Have you seen this redacted version, Miss Brophy?

MS. BROPHY: I can see it from here, Your Honor.

THE COURT: Yes. Well, I will ask that a copy –

MS. BROPHY: I have a copy.

MS. DEWALT: Sorry, Your Honor. We talked about it, but I didn't actually show it to her. I will apologize.

THE COURT: So any exceptions or questions about my ruling from either party?

MS. BROPHY: No, Your Honor.

MS. DEWALT: No, Your Honor.

MS. BROPHY: Just the further position from Defense. I understand that Your Honor has given the ruling; however, after conferring with some of my colleagues over the lunch break, I do believe that this ruling is prejudicial to the Defendant. There is DNA, mixed DNA results, in this case. As far as the stain in her underwear, the idea of transfer DNA, that does somewhat undermine Defense's ability to make that argument. So I would just like that preserved. A508.

THE COURT: Okay. That is noted for the record. But I have ruled on the arguments that were presented to the Court. Anything further on this matter?

MS. DEWALT: Your Honor, I would just ask to step out and speak to the DNA expert very quickly and let him know that there is to be no mention of that.

THE COURT: Yes, you may.

MS. DEWALT: Thank you, Your Honor. A503-509.

Paul Gilbert, DNA Expert

Mr. Gilbert had worked for the Division of Forensic Services in the DNA Unit for almost 20 years, examining items pertinent to cases submitted to the unit, creating DNA profiles, interpreting them, and providing expert testimony in courts. A512.

A full single source DNA profile is a profile that comes from just one person. A524. A partial single source profile has information missing. A525. A mixed DNA profile means that there is more than one source—that it comes from two or more people. A526.

A individual's DNA may be interpreted to be included in a mixed DNA profile when after comparing test areas to a known reference profile, we can say that individual contributed to a mixture of 2 or 3 other individuals. An individual's DNA may be excluded if a comparison with a reference sample "in a conclusive area or in one or more conclusive areas," shows there is a "mismatch." A526.

When there is either no profile or a weak profile, it "isn't good for comparisons" and "no conclusions can be drawn as to whether somebody can be included in a mixture, or whether they can be compared at all." A527.

Both evidentiary and reference samples are amplified for testing. A528. When 2 surfaces touch, there is an exchange of material between both surfaces.

A528. Whether DNA (or cellular material) is left behind when 2 surfaces touch depends on a number of factors: length of contact, pressure, post-contact activities (removing cellular material), the nature of the surfaces themselves. A529. Three or more contributors are deemed too complex for comparison. A529.

In this case, the lab received items on August 7, 2023, including the sexual assault evidence collection kit take from H.A., swabs from the interior of the vehicle, swabs taken from Daryl Baldwin's body and a buccal reference from Baldwin's mouth. A530. They were placed in secure evidence lockers to await the assignment of an analyst and then examination. A533.

Preliminary testing was done for semen consisting of a presumptive color test and microscopy looking for sperm and epithelial cells. A533-534.

Gilbert wrote a report of the conclusions he drew. A534. It (the redacted version) was admitted as State's Exhibit No. 35. A534-535, A933-937.

On the report, Table 1 shows samples tested for semen. Gilbert testified that he "was able to see sperm cells" on the swabs from H.A.'s buttocks. A535-536; A933 (Not testified to and redacted from the report admitted into evidence was preliminary test of the underwear which also tested positive for semen. A925.)

Table 2 shows Gilbert "examined" but on which no preliminary analyses were done. A536. Because that is only done on swabs "of an intimate nature." A536-537.

Table 3 shows what is "beyond prelim analysis." These samples were taken through DNA extraction. When performing the quantitation procedure, Gilbert can see the amount of DNA but also whether male DNA is present. A538. Male DNA was found in the vaginal vestibule (A538-539), medial left thigh, medial right thigh, buttocks, face, neck, left breast, right breast, abdomen, and back. A539, 934. Redacted from State Exhibit 35 and not testified to at trial was the finding of Male DNA on the underwear stain. A926.

Table 4 shows 3 samples where no male DNA was detected so no further processing occurred. A539-540, 934.

Table 5 shows 3 samples where no preliminary testing occurred but there was DNA extraction and further processing. A540, 934.

Table 6 is a list of items that may have hair on them. No testing of hair is done by Gilbert's lab, but the record is in case some other lab were to do an analysis of hair. A540, 934.

The next part of the report contains the DNA conclusions where samples are run that have DNA profiles. A540-541.

Table 1 of the DNA Analysis Conclusions is just the reference samples of H.A. and Daryl Baldwin. A541, 935.

Gilbert did not testify to the conclusion found in Table 2, which was the portion of the DNA report redacted over Baldwin's objection by order of the Trial

Judge. A927. The redacted language of Table 2 is preserved for the record in Court Exhibit 2. A925-932. Table 2 concludes that Sample DNA23-429A4aS, a stain located on H.A.'s underwear, "produced a single source DNA consistent with unknown male A." A927. The unredacted DNA report was made part of the record on appeal as Court Exhibit 2. A659.

Table 3 was the penile swab of Baldwin that produced a single source matching Baldwin's.

Gilbert testified that Table 4, as admitted and redacted in State's Exhibit No. 5, disclosed "a single source DNA profile"—H.A.'s—for the underwear stain. A542, A935. The redacted language found in Court Exhibit 2 was "following subtraction of the associated sperm cell fraction." A927.

Table 5 contained evidentiary samples taken from the body of H.A. that matched Daryl Baldwin following the subtraction of H.A.'s profile. They came from her left medial thigh, face, neck, left breast, right breast, and back. A542, A935. Statistical evidence followed. A543-546.

Table 6 dealt with swabs on the arm rest and passenger handle that showed a mixture of 3 profiles, at least 1 of whom was male, for which no comparison can be made because of the complexity. A547, A935.

Table 7 listed swabs of medial right thigh and buttock that provided insufficient amounts of amplified DNA. A547, A936.

Table 8 noted samples where a DNA profile was produced that "was similar to other ones where [Gilbert] was able to subtract out the known DNA profile of [H.A.]. But what was left over was considered an insufficient amount of DNA and, therefore, no conclusions could be made. A548. These swabs were of the vaginal vestibule and abdomen of H.A. A936. Additional testimony of Mr. Gilbert follows:

> Q. Okay.
> So even though -- and, again, preliminarily -- there was a presence of sperm in the medial right thigh, the buttock, and the vaginal vestibule. Correct?
> A. I believe the only sample that contains sperm were the swabs from the buttocks.
> Q. Okay.
> Oh, that's correct. I apologize, I misspoke. But there was not enough amplified DNA to match that to a profile, correct?
> A. For, um --
> Q. To the buttock swab.
> A. To the buttocks swabs, that is correct.
> The profile was insufficient to be able to draw any conclusions. A548-549.

Gilbert testified that you would expect material to transfer from vaginal sex to a man's penis: "Whether there is enough to get a DNA profile is another question." A559-560. There was no male DNA on the swabs from H.A.'s mons, labia majora and posterior fourchette, the vaginal vault and perineum. A563-564.

Gilbert testified that for 10 minutes of fellatio and for 10 to 15 minutes of vaginal sexual intercourse, he would expect an exchange of DNA material to occur. A570. However, post contact activities between the event and the collection of the sample may result in no DNA profile being left. A571. Like bathing and showering. A572.

Detective Ford's Text Message Testimony

Ford testified that H.A. told him that Baldwin smoked crack both before and after the sexual assault. A608. Baldwin was 37 years of age at the time of the offenses. A608. H.A. was 13 years old, too young to legally consent to sexual activity with a 37-year-old. A609.

Text messages from H.A. to Baldwin contained photos of herself, to which Baldwin responded "Beautiful." A611. Baldwin sent an image to H.A. of her dressed in a bra and "some sort of bottom." A612. Baldwin commented, "Favorite." H.A., "TY." H.A., "And OFC it BC you can see my boobs." A612. Baldwin: "No, BC I can see your belly." H.A.: "I know I'm fat." And then another to Baldwin: "Are you coming over?" Baldwin: "Not right now, hon, I need to make some money. But if you want me to, I can later tonight." H.A.: "Okay." Baldwin: "Is that a yes." H.A. "Yes." Thread starts at 5:33 pm on June 17, 2023. A613.

Later in the thread, Ford testified that H.A. wrote, "I want to F, exclamation," meaning "to fuck." A621.

After the State rested and the Court denied Baldwin's motions for judgment of acquittal, Baldwin elected not to testify at trial. A662-664. Baldwin did not call any witnesses in his defense. A664, A672.

The jury was offered three options in returning a verdict to Counts 1 and 2 of the severed indictment of Case A. A789-839.

> . . . what we're going to do on Count 1 is the first choice will say, "Guilty as charged, and all 12 jurors unanimously agree that defendant engaged in sexual intercourse in the form of fellatio; or Guilty as charged, and all 12 jurors unanimously agree defendant engaged in sexual intercourse in the form of vaginal intercourse; or Guilty as charged, and all 12 jurors unanimously agree the defendant engaged in sexual intercourse in the form of both fellatio and vaginal intercourse; A840.

The jury found Baldwin guilty of all the charges of Case A, including "guilty as charged, and all 12 jurors unanimously agree that the defendant engaged in sexual intercourse in the form of vaginal sexual intercourse" as to both Count 1, Sexual Abuse of a Child by a Person of Trust in the First Degree, and Count 2, Rape in the Second Degree. A847-848. A bench trial of Case B held the next day resulted in Baldwin being found guilty of the severed charge of Sex Offender Unlawful Sexual Conduct Against a Child (A13), the Trial Judge agreeing with the jury that vaginal sexual intercourse was proven beyond a reasonable doubt. A876.

I. THE TRIAL COURT ERRED WHEN IT FAILED TO ADMIT THE ENTIRE DNA REPORT INTO EVIDENCE UNDER THE RULE OF COMPLETENESS AND DETERMINED IT TO HAVE MINIMAL PROBATIVE VALUE TO DEFENDANT WHEN BALANCED AGAINST THE RISK OF UNFAIR PREJUDICE TO THE STATE, THEREBY DEPRIVING DEFENDANT OF A FAIR TRIAL.

Question Presented

Whether the trial court undervalued the probative value to the defense of the excluded portion of the DNA Report and its relevance and relationship to the rest of the Report, when the excluded portion showed that male DNA other than the Defendant's was found on underwear worn by the complaining witness before and after an alleged sexual assault; and overestimated the potential of that evidence to cause unfair prejudice to the State; thereby depriving the Defendant of a fair trial. A503-509, Exhibit B.

Scope of Review

This Court reviews Baldwin's claim on appeal that the Trial Judge erred in refusing to admit certain evidence under the abuse of discretion standard.[1]

Merits of Argument

The Trial Judge agreed with Defense Counsel, not the State, that Delaware's Rape Shield statutes did not apply to Baldwin's request to admit a full DNA report

[1] *Thompson v. State*, 205 A.3d 827, 834 (Del. 2019).

that included evidence of another male's DNA on the underwear of the underage Complaining Witness (the "CW" or "H.A."). Exhibit A. A504-505. Baldwin does not challenge that part of the Trial Court's ruling.

Rather, objection is lodged here (as below) that the entire writing embodied by the unredacted DNA report should have been presented to the jury under the doctrine of completeness. A364, A492. Baldwin appeals the Trial Court's decision to disregard the rule and permit the State's introduction of the redacted report: that the probative value of the redacted portion to Baldwin's defense was substantially outweighed by the risk this evidence would cause the jury to believe H.A. had had sex with someone other than the defendant. The Trial Court found "a very real danger" such a belief would itself create "significant danger" of misleading or confusing the jury as to the real issues it had to decide. Exhibit A. A506-507.

On appeal, Baldwin asserts that the Trial Court in applying Delaware Rules of Evidence 106 and 403 abused its discretion by (1) undervaluing the probative value of the excluded portion of the DNA report to Baldwin's defense and (2) over-estimating the likelihood the excluded evidence would confuse or mislead the jury.

A. Under the rule of completeness, the entire DNA Report should have been introduced into evidence, not the redacted version.

The common-law rule of completeness is codified in Delaware by D.R.E 106.[2] It provides that: "If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part—or any other writing or recorded statement—that in fairness ought to be considered at the same time."[3] When a party introduces part of a writing, the opposing party must seek to have the rest of the writing "which ought in fairness be considered contemporaneously with it" admitted into evidence.[4] Parts of the writing that the opposing party may compel entry into evidence under Rule 106 must be (1) relevant to issues and (2) limited to those parts that qualify or explain the subject matter of the portion being offered by the other side.[5]

In this case, Baldwin sustained his burden, asserting that the admission of the redacted part of the Report comprising conclusive evidence of another male's DNA on H.A.'s underwear was necessary for the jury to have "the whole picture" that included "mixed results." To do otherwise, Baldwin argued, would be prejudicial to him. A492, A508. Baldwin was right that this exclusion by the Trial Court unfairly prejudiced his case because the ruling's effect distorted the meaning of the unredacted conclusions in the Report and magnified the likelihood jurors would see

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[2] *Thompson v. State*, 205 A.3d at 834.
[3] D.R.E. 106.
[4] *Flamer v. State*, 453 A.2d 130, 135 (Del. 2008).
[5] *Id*.

the only reasonably possible explanation for inconclusive and other mixed DNA results was that Baldwin was the contributor, depriving him of an example showing that another male could have directly or indirectly deposited the inconclusive male DNA on H.A.

B. The excluded portion of the DNA report was highly relevant to the most serious charges against Baldwin.

Among the acts with which the indictment charged Baldwin was engaging in sexual intercourse with H.A., conduct unlawful regardless of consent because of her age.[6] Counts 1 and 2 of Case A each contain an element charging Baldwin with having sexual intercourse with H.A.[7] But neither count particularizes what specific form the intercourse took. However, H.A.'s trial testimony described both fellatio (A64-65) and vaginal sexual intercourse (A66-67), and the instructions gave jurors a choice of finding (or not finding) beyond a reasonable doubt that Baldwin had done one, the other, or both, of these acts. A840. In the end, all 12 jurors declined to find Baldwin guilty of having done both acts and of the fellatio. In finding him guilty of Counts 1 and 2, the verdict of all 12 jurors declared only that they found beyond a reasonable doubt for having engaged in vaginal sexual intercourse with H.A. A847. The reasonable inference to be drawn from this result is that at least some of the

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[6] 11 *Del. C.* § 761(l).

[7] These are Counts 2 and 3 of the pre-severance indictment. A15-17.

jurors had reasonable doubt that H.A.'s account of the fellatio lacked enough credibility to support a guilty verdict.[8]

Thr expert testimony and the DNA Report provided both conclusive and inconclusive results. In a practical sense, a conclusive result meant that Baldwin's (or any known or unknown person's) DNA was either present or not present at a particular place.[9] A526-527. An inconclusive result meant the testing could neither exclude nor include the presence of a person's DNA somewhere. A527.

The DNA results most relevant to whether Baldwin engaged in vaginal sexual intercourse with H.A.[10] presented to the jury were:

1. Sperm and male DNA was found on H.A.'s buttocks, including sperm fragment, but no conclusions could be reached because of insufficient amounts of amplified DNA. A537, A933-935. *Therefore, the jury could only find that no male, including Baldwin and any other unknown or known male individual, can be excluded or included as the source of this material because no valid comparisons can be made.*[11]

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[8] The inference drawn here seems likely because the choice of 3 different verdicts represented the Court and counsel's attempt to ensure unanimity as to the specific conduct constituting the sexual intercourse upon which any verdict would be based.

[9] The conclusive presence of a single profile of DNA, or a "match," is expressed as a numerical probability. A543-546.

[10] Meaning swab samples taken from the body of H.A., not places in the car.

[11] In italics in the above list is the inference to be drawn from Mr. Gilbert's testimony concerning inconclusive results, supported by A527, lines 3-11.

2. Male DNA was present in the vaginal vestibule, but no conclusions could be reached because of insufficient amounts of amplified DNA. A933-934, 936. *Therefore, the jury could only find that no male, including Baldwin and any other unknown or known male individual, can be excluded or included as the source of this material because no valid comparisons can be made.*
3. Baldwin's DNA was found on H.A.'s left medial thigh, face, neck, left breast, right breast, and back. A935.
4. Male DNA was present on the right medial thigh and abdomen, but no conclusions could be reached because of insufficient amounts of amplified DNA. A934, 936. *Therefore, the jury could only find no male, including Baldwin and any other unknown or known male individual, can be excluded or included as the source of this material because no valid comparisons can be made.*
5. DNA from H.A.'s underwear "produced a single source DNA profile []and this matched the DNA profile of [H.A.]", including sperm fragment. A542, A935.

On the other hand, because Exhibit 35, the DNA report, was incomplete and redacted, jurors did not hear that:

1. Male DNA from a sperm fragment was found on H.A.'s underwear consistent with an unknown male individual that was conclusively not Baldwin. A925-927.

The exclusion of the latter evidence impaired Baldwin's ability to present a complete defense. Without it, the notion inconclusive male DNA found in H.A.'s vaginal vestibule, on her right medial thigh, her abdomen, and her buttocks belonged to someone other than Baldwin's might well seem far-fetched and contrary to common sense. However, with it included for the jury consideration, the premise is supported by objective evidence. It would have given substance and support to a defense theory of innocence.

Not only did the exclusion harm Defense Counsel's ability to present a compete defense,[12] but State took advantage of this evidentiary ellipsis in its argument for guilt:

> So first let's talk about buttocks swab. The DNA report found that, with respect to the buttocks swab, there was a presence of semen. Unfortunately, as Mr. Gilbert testified, although it only takes a small trace of DNA to test, and very little levels of DNA can be tested, you still need a quantifiable, qualitative optimal amount of amplified DNA to test it and to match it to a DNA profile. So just because there were no conclusions about the buttocks sperm fraction swab does not mean that there was not sperm present. ***It just means that there was not enough there to match it to the defendant's profile.*** (Emphasis added.) A737

[12] *Crane v. Kentucky*, 476 U.S. 683, 689-690 (1986); U.S. Const. amends. 6, 14.

The import of this argument is that if there had been more DNA to test, it would have turned out to be Baldwin's.[13] Without an example of the DNA of a male other than Baldwin's found at a nearby location on H.A., the inference the State asked the jury to draw had no counter. But if the full report had come in, as D.R.E 106 in fairness required, Baldwin would have pointed to the sample, fairly and forcefully arguing that had it been sufficient, it could reasonably have turned out to be someone else's, as indeed the sample from the underwear stain had.

The State's summation also discussed the presence of male DNA in the vaginal vestibule, an area of the most intimate nature, saying "although there was not a DNA profile for the defendant there, []not a profile to be matched to the defendant there, there was a presence of male DNA." A736. Again, had known DNA of a male other than Baldwin been before the jury, found in a stain in the underwear of H.A., Baldwin's counsel would have had an example of male DNA—not Baldwin's—to show that this inconclusive DNA in H.A.'s most private area, one associated with the vaginal sexual intercourse counts of which Baldwin was ultimately convicted, could just as easily been someone else's. Without the excluded

[13] The State made the same argument earlier in countering a Motion for Judgement of Acquittal after the State's case: "With respect to the DNA evidence, there was a preliminary presence of sperm on Ms. Haley's buttocks, however, ***due to a lack of amplified DNA, that sperm was not able to be matched with the defendant.*** However, that certainly goes to the evidence with respect to whether or not Mr. Baldwin touched Haley's buttocks." (Emphasis added.) A641

portion of the report, the jury is left with the misleading impression of the evitability that a vaginal sample sufficient for comparison would have matched Baldwin's as well as the objectively false belief that only H.A.'s DNA was found on her underwear. A542, A935. This exclusion harmed Baldwin's defense generally. But the damage was acute to Baldwin's ability to support a defense to the sexual intercourse counts of the indictment against him.

C. The excluded portion of the DNA report, if introduced, would not be unfairly prejudicial and likely to mislead or confuse the jury.

D.R.E. 403 provides that: "The Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."[14]

The Trial Court accepted Baldwin's argument that DNA transfer can occur in host of non-sexual ways, as argued by Baldwin, but determined that this would mean that another male's DNA on H.A.'s would have "minimal" probative value , and so introducing evidence of the presence of an unknown male's DNA on H.A.'s ran the risk of causing the jury to believe H.A. had engaged in prior sexual conduct and, in this way, confuse the issues and mislead the jury. A506-507.

[14] D.R.E. 403.

While a trial court is afforded its "normal discretion" under D.R.E 403 to exclude only marginally relevant evidence, posing the risk of harassment, unfair prejudice, or confusion of the issues[15], it is generally not free to keep from the jury evidence that, as here, "may raise a reasonable doubt as to a defendant's guilt"[16] or that is highly relevant to the defense.[17]

For example, in *People v. Hood*, an appeals court reversed conviction and found an abuse of discretion below for excluding evidence of another male's DNA on the exterior vagina of the alleged victim under a rule 403 analysis because that evidence was "relevant to a material fact" and "other nonsexual explanation for how the DNA could have transferred to [the alleged victim]."[18] The same is true for Baldwin. The excluded DNA conclusion, as demonstrated above, would have substantially diminished the weight of the State's evidence that Baldwin had vaginal sexual intercourse with H.A. And that evidence would not have been introduced by the defense to prove any prior sexual conduct on H.A's part. A365.

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[15] *See Banks v. State*, 93 A.3d 643, 650, 651 (Del. 2014).
[16] *See Manna v. State*, 945 A.2d 1149, 1157 (2008).
[17] *Sidibe v. Sutter Health*, 103 F.4th 675, 698-699 (9th Cir. 2024) (" That all the evidence discussed above was highly relevant (as opposed to "minimally" so, as the district court concluded) does not, by itself, mean that the district court erred in excluding it under Rule 403. However, *because the excluded evidence was highly relevant, any risk of prejudice or other dangers must be very high to justify exclusion*." (Emphasis added).
[18] 550 P.3d 723, 728 (Colo. App. 2024).

In fact, the risk of prejudice to H.A. or to the State that the jury would think H.A. promiscuous is really a paper tiger. The inconclusive male DNA evidence on H.A.'s body, including the sperm fragment on her buttocks, because it cannot be said to be Baldwin's or any other specific male's, is, under the State's rejected theory, evidence of H.A.'s prior sexual conduct with another. The inconclusive results here, coupled with the State evidence of H.A.'s desire to be promiscuous—her texts to that effect—the promiscuity inference was planted by the State's proof. The State cannot have it both ways. It should not be able to claim unfair prejudice to protect itself and H.A. from an inference of promiscuity and use evidence showing H.A.'s willingness to be so at the same time while excluding probative evidence for the defense under the same theory.

Assuming for the sake of argument that the State and H.A do face some prejudice if the excluded DNA result were admitted, the jurors could have been instructed not to consider it as showing promiscuity, advised of the irrelevance of that issue and actual purpose of the evidence in relation to the true issues of the case—namely, to determine the weight and value of the other DNA findings in the report.[19] Ample caselaw holds that jurors are presumed to follow the instructions

given to them.[20] In addition, a limiting instruction could have been crafted to eliminate that perceived danger.[21] Such instructions are routinely given when evidence of prior bad acts is introduced under D.R.E. Rule 404(b). They tell jurors that evidence admitted for one reason may not be used for another, and "[l]imiting instructions are indeed generally sufficient to eliminate, or at least reduce, the risk of unfair prejudice where the prior bad acts evidence is both highly relevant and inherently prejudicial."[22] The general legal principle that the more probative the evidence, the more courts should tolerate some risk of prejudice applies here.[23] Given the high level of the excluded evidence's relevance and the availability of supplemental limiting instructions, the Trial Court abused its discretion in failing to implement the rule of completeness of D.R.E 106.

D. Baldwin was significantly prejudiced by the exclusion of the evidence which acted to deny him a fair trial.

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[20] *Capano v. State*, 781 A.2d 556, 589 (Del. 2001) ("As a general rule, we must presume that jurors followed the court's instructions.") Internal quotes and citation omitted.)

[21] *Morse v. State*, 120 A.3d 1, 9 (Del. 2015); *Getz v. State*, 538 A.2d 726, 731-732, discussing the exclusionary and inclusionary approaches to admitting prior bad acts for a purpose permitted under D.R.E 404(b).

[22] *State v. Pelletier*, 473 P.3d 991, 1003 (Mont. 2020), as amended (Oct. 27, 2020).

[23] *United States v. Bowling*, 770 F.3d 1168, 1177 (7th Cir. 2014).

If it is determined that the Trial Court abused its discretion in failing to admit the unredacted DNA Report, this Court must determine whether the error created significant prejudice which acted to deny Baldwin a fair trial.[24]

The jury in this case did not find H.A. credible enough to conclude her account of fellatio was proven beyond a reasonable doubt. A840. Her descriptions of these events to police, medical personnel, and, during testimony to the jury contained significant and, at time, irreconcilable inconsistency that demonstrated a fluid rearranging of alleged facts. The State admitted as much in closing. A754. Nevertheless, those accounts are consistent in one regard. They depict her as the unwilling participant—choked, threatened, held down, mouth covered—physically forced. A482-483. The events are described as feeling weird, nasty, and painful. A68-69. But her texts tell another story—that the time with him were desired. A621. So, while consent is not any defense under the law, it is relevant that H.A. provided two very different and, in fact, opposing versions of her attitude to what she said happened to her. While she testified to it feeling "weird," "nasty" and painful (A68-69), her texts expressed she wanted "to F." A621. She was also very tired and "half asleep" when she was being assaulted. A195.

Given the discrepancies in her accounts, the opposing descriptions she gave to the authorities versus her texts with Baldwin, her fatigue and sleepiness, and the

[24] *Manna v. State*, 945 A.2d at 1153.

jury's failure to convict for the fellatio claim, the objective nature of DNA evidence likely played an outsized role in convicting Baldwin of the most serious charges against him—those involving an allegation of vaginal sexual intercourse. Because the State was allowed to proffer inconclusive male DNA, with the implication that it likely belonging to Baldwin, including a sperm fragment on her buttocks and male DNA in her vaginal vestibule without the countervailing evidence to limit and rebut the State's implication, showing the jury that another male's DNA (not Baldwin's) could neither be excluded nor included as the contributor of those inconclusive samples; the jury received a distorted and untrue version of the facts—and one that severely harmed Baldwin.

This combination of factors significantly prejudiced Baldwin and worked to deny him a fair trial.[25]

[25] *Manna*.

CONCLUSION

For the reasons and upon the authorities cited herein, the convictions in Cases A and B of the Appellant Daryl Baldwin should be reversed and remanded for new trials.

Respectfully submitted,

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