



IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIANA HAZELETT)	
)	
Defendant-Below,)	
Appellant,)	
)	
v.)	No. 151, 2024
)	
)	
STATE OF DELAWARE,)	
)	
Plaintiff-Below,)	
Appellee.)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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TABLE OF CONTENTS

	PAGE
Table of Authorities	ii
Nature and Stage of the Proceedings	1
Summary of the Argument	3
Statement of Facts	4
Argument:	
I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT PERMITTED HAZELETT TO CROSS- EXAMINE CPL. MOSES ABOUT HIS PRIOR CONDUCT AND CREDIBILITY, BUT DID NOT PERMIT HAZELETT TO INQUIRE INTO THE RESULT OF THE WHITTLE CASE OR ARGUE THE RESULT OR INFERENCES FROM IT TO THE JURY	11
Conclusion	28

TABLE OF AUTHORITIES

Cases

<i>Dahl v. State</i> , 926 A.2d 1077 (Del. 2007)	11
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974).....	12
<i>Delaware v. Van Arsdall</i> , 475 U.S. 673 (1986).....	12
<i>Garden v. Sutton</i> , 683 A.2d 1041 (Del. 1996).....	12
<i>Harper v. State</i> , 970 A.2d 199 (Del. 2009).....	12
<i>Smith v. State</i> , 913 A.2d 1197 (Del. 2006)	11
<i>Snowden v. State</i> , 672 A.2d 1017 (Del. 1996).....	7, 12, 13, 24, 25
<i>State v. Tilghman</i> , 2010 WL 703055 (Del. Super. Ct. Feb. 25, 2010)	9
<i>Tilghman v. State</i> , 2010 WL 703055 (Del. Feb. 25, 2010).....	21
<i>United States v. Bagley</i> , 473 U.S. 667 (1985)	12
<i>Weber v. State</i> , 457 A.2d 674 (Del. 1983).....	13
<i>Wilkerson v. State</i> , 953 A.2d 152 (Del. 2008)	11
<i>Wilson v. State</i> , 271 A.3d 733 (Del. 2022)	12

Rules

D.R.E. 901.....	13
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NATURE AND STAGE OF THE PROCEEDINGS

On November 21, 2022, a grand jury returned an indictment against Briana Hazelett (“Hazelett”) for Possession of a Firearm by a Person Prohibited (“PFBPP”), Illegal Possession of a Controlled Substance, Possession of Marijuana, Driving a Vehicle While License is Suspended or Revoked, and Failure to Use a Turn Signal. A1; A6-A10. The charges are based upon a traffic infraction and subsequent offenses after a traffic stop on March 2, 2022. A6-A10.

Hazelett’s two-day jury trial began on May 1, 2023. A4. During the cross-examination of Wilmington Police Cpl. Leonard Moses (“Cpl. Moses”), Hazelett sought to ask Cpl. Moses about his actions in a 2016 case, *State v. Daryus Whittle*. A32. The State objected on the basis that the Superior Court previously addressed a similar issue with Cpl. Moses in *State v. Terrell Mobley*. A32-33. The trial judge researched the matter, including contacting the trial judge in *Mobley* and learned that the *Mobley* judge “allowed cross-examination of this impeachment line of questioning.” A41. The trial judge similarly ruled that, “I will allow cross examination on the impeachment line of questioning” and “I am finding that it is proper impeachment testimony.” A41. The jury found Hazelett guilty of all charges.

A4. On March 15, 2024, the court sentenced Hazelett to an aggregate three and a half years of incarceration suspended for probation and \$175 in fines.¹

Hazelett timely appealed and filed her Opening Brief. This is the State's Answering Brief.

¹ Appellant's Exhibit B.

SUMMARY OF THE ARGUMENT

- I. Appellant's argument is denied. Hazelett was not "greatly restricted" in the impeachment evidence she was allowed to present. The trial court asked Hazelett's trial counsel ("trial counsel") about her proposed line of questioning for Cpl. Moses. Trial counsel advised the court about how she planned to question Cpl. Moses. The court permitted trial counsel to pursue this line of questioning on cross-examination. Hazelett subsequently sought to question Cpl. Moses about the result of the trial in *Whittle*. The trial court appropriately denied this request because it was likely to result in jury confusion. Although the State incorrectly argued to the court that Hazelett did not provide the impeachment material in advance, and the court gave the State time to review the material without objection from Hazelett's trial counsel, this resulted in no prejudice to Hazelett. Even though Hazelett had no requirement to provide the State with the impeachment material in discovery, Hazelett's trial counsel had an obligation to make the trial court aware of the controversial impeachment issue prior to jury selection. The court permitted Hazelett to argue that the State had not met the elements of the turn signal violation, but, because evidence suppression is not before the jury, did not allow argument that the stop was unlawful. The trial court found that Cpl. Moses was a crucial witness for limited portions of the incident. However, body-worn camera ("BWC") video and testimony from other officers rendered him non-crucial.

STATEMENT OF FACTS

On March 2, 2022, Wilmington Police Department (“WPD”) Cpl. Moses and other officers were on proactive patrol in the center city of Wilmington. A19. Cpl. Moses observed a black Volkswagen Passat containing “two middle-aged females and two young males.” A19. Hazelett was driving and Mahogany Brown was the front seat passenger. A21; A28. Officers saw the people in the back of the car make furtive movements. A21. Officers pulled behind Hazelett’s car and observed her make a turn onto the 600 block of West 6th Street without using a turn signal. A20. Police stopped the car, and Cpl. Moses approached. A21. Cpl. Moses wore a functioning BWC. The BWC captured Cpl. Moses’s approach to the car and subsequent investigation. Cpl. Moses and his partner, Officer Chris Rosaio (“Ofc. Rosaio”), approached the car. A21. Cpl. Moses could smell a strong odor of marijuana coming from the car. A21. Hazelett pointed to a firearm on the dashboard and Cpl. Moses could see a firearm and firearm magazine on the dashboard. A21. Hazelett admitted the gun belonged to her. A28. Cpl. Moses also saw a burning marijuana blunt near the center console. A22. Cpl. David Schulz (“Cpl. Schulz”) searched the Volkswagen Passat on scene and conducted an inventory search at WPD. A39. Cpl. Schulz also wore a functioning BWC.² On scene, Cpl. Schulz

² The State has included the BWC videos for Cpl. Moses and Cpl. Schulz that were admitted in the trial below in the State’s Appendix as B1 and B2, respectively.

also smelled a strong odor of burnt marijuana coming from the Passat. A35. He located marijuana, described as a brown item, near the car's emergency brake lever in an area accessible to the driver. A36. This can be seen in Cpl. Schulz's BWC video.³ Cpl. Schulz located baggies containing marijuana in the front and back seat areas. A37. He also noted a burnt marijuana blunt by the car's shifter.⁴ He placed the burnt marijuana blunt inside of a glove to prevent it from spreading around the evidence bag. A38. Cpl. Schulz also collected the gun, an extended magazine, and nine rounds of ammunition that were inside the magazine. A38-39. During an inventory search at WPD, Cpl. Schulz recovered a cross-body satchel containing a pill bottle with Hazelett's name on it. A39. The satchel was located on the front passenger side floor. A40. The pill bottle contained pills that Cpl. Schulz described as similar to "Flintstone vitamins." A39. Those pills were determined to be methamphetamine. A49-50. All the recovered baggies and the blunt contained marijuana. A49-50.

At trial, Hazelett sought to cross-examine Cpl. Moses about contradictory accounts in his arrest warrant, police report, and testimony in a prior case, *State v. Daryus Whittle*. A32. In *Whittle*, Cpl. Moses authored a warrant and testified in a preliminary hearing that he saw Whittle possess a gun from an undisclosed location.

³ B2 at 2:42, 2:57.

⁴ B2 at 11:20.

A119-125. At trial, Cpl. Moses contradicted his prior sworn statements and said that the incident was seen on video by a Downtown Visions employee who informed police. A120. The Superior Court struck Cpl. Moses's testimony as hearsay and granted Whittle's motion for judgment of acquittal. A125. The *Whittle* court asked the prosecutor in that case to notify Cpl. Moses's superiors. A125.

The State objected when Hazelett asked questions related to *Whittle* and argued that the issue was previously addressed by the Superior Court in *State v. Terrell Mobley*. The prosecutor advised the trial court that if it was the case the prosecutor was thinking of, the judge in *Mobley* "specifically considered this issue and made no findings regarding incorrect testimony." A32. Trial counsel told the judge that she believed that the judge in *Mobley* "has made a finding that it was accidental but (that judge) is not the fact finder in this case, the credibility is solely up to this jury." A33. The trial judge decided to research the issue further during the lunch break, stating, "You know, you don't have—you don't have the specifics of the ruling, I don't have it, so let's continue on in a very—a different line of questioning." A34.

The trial judge returned to this issue. She indicated that she researched the issue, including contacting the judge in *Mobley*. Based on the *Mobley* ruling, she permitted "cross-examination on the impeachment line of questioning." A41. The trial judge also found that it was proper impeachment testimony. A41. The State

complained about the volume of impeachment materials to review. A42. The trial judge felt it was fair to allow the State to review the materials overnight and trial counsel did not object. A42.

Later in the day, the trial judge initiated a discussion about Cpl. Moses's potential testimony. After discussing Cpl. Moses's contradictory statements in *Whittle*, the State and trial counsel agreed that the dismissal in *Whittle* was based upon the lack of an eyewitness from Downtown Visions who could authenticate the video. A54. The judge inquired into trial counsel's proposed line of questioning. Trial counsel indicated that she planned to ask about Cpl. Moses's probable cause affidavit, his preliminary hearing testimony, and his trial testimony from *Whittle*, in Cpl. Moses's own words, "and leave it at that." A55. She also planned to ask Cpl. Moses about the importance of truthfulness and swearing to tell the truth at those various stages. A55. Trial counsel advised, "I'm not planning on getting deep into the facts of each of the cases, or that case specifically. I don't think delving too deeply into the facts is relevant." A55. The trial court agreed. The trial court also discussed the application of the *Snowden* factors to Cpl. Moses's impeachment.⁵ A55. In determining whether Cpl. Moses was "crucial," the trial court noted that he was the chief investigating officer, but there was BWC video. A55. The trial court

⁵ *Snowden v. State*, 672 A.2d 1017 (Del. 1996).

surmised that the only evidence that Cpl. Moses testified about that was not captured on BWC was Hazelett's car's initial stop. A55. The State agreed that the initial stop was not captured on video, but Officer Rosaio testified about viewing the turn signal violation. A55. When trial counsel was asked if she agreed that the initial stop was the only portion not captured on video, she replied, "Yes, largely." A55.

The court found that there was a limited applicable portion of Cpl. Moses's testimony because of video captured by BWC. A57. The trial court limited questioning and inferences that *Whittle* was dismissed due to Cpl. Moses's contradictory statements because there was no specific finding of dishonesty and the case was dismissed on the record for hearsay. A57.

Trial counsel indicated a desire to resume Cpl. Moses's cross-examination once he was recalled to the stand by the State. A58. Trial counsel did not oppose the State's overnight review of the impeachment documents, so trial proceeded with the State resting (except for Cpl. Moses's recall for cross-examination and redirect examination). A58.

In the defense case, Hazelett testified that she was driving her roommate's car. A59. She was accompanied by Mahogany Brown, Brown's son, and the son's friend. Hazelett testified that the gun was hers. She claimed that she gave the pill bottle with her name on it to her roommate. A59. She denied knowledge of the marijuana or methamphetamine found in the car. She claimed that the marijuana

found throughout the car belonged to Brown. A60. She claimed that the methamphetamine found in the bottle with her name on it belonged to her roommate. A60.

The following day, the State recalled Cpl. Moses. Trial counsel cross-examined him about being truthful in sworn affidavits and testimony. A72. She also questioned him about his actions in *Whittle*. A72. Trial counsel had Cpl. Moses acknowledge his prior contradictory testimony in *Whittle*, as well as the timing of his review of the video in that case. A72. At the conclusion of cross-examination, trial counsel maintained her objection that she should have been able to present that *Whittle* was dismissed. A74. The trial court added to its prior ruling by citing *State v. Tilghman*, where the court found that there were allegations of untruthfulness without a formal finding and the *Tilghman* court refused to allow impeachment testimony.⁶ A74. The judge supplemented her prior ruling by explaining that she allowed the *Whittle* cross-examination because she found that Cpl. Moses's credibility was at issue with respect to his actions prior to the BWC footage and for the odor of marijuana that he smelled. A74. The judge denied trial counsel's request to ask about the *Whittle* result, finding that it could tend to confuse the jury. A74.

⁶ 2010 WL 703055 (Del. Super. Ct. Feb. 25, 2010).

The judge also told trial counsel that she was willing to entertain a question about the resolution if it did not mislead the jury. A74.

ARGUMENT

I. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION OR OTHERWISE ERR WHEN IT PERMITTED HAZELETT TO CROSS-EXAMINE CPL. MOSES ABOUT HIS PRIOR CONDUCT AND CREDIBILITY, BUT DID NOT PERMIT HAZELETT TO INQUIRE INTO THE RESULT OF THE *WHITTLE* CASE OR ARGUE THE RESULT OR INFERENCES FROM IT TO THE JURY.

Questions Presented

Whether the Superior Court abused its discretion or otherwise erred, and whether Hazelett was prejudiced when the court permitted Cpl. Moses's cross-examination as outlined by trial counsel, but declined to allow Hazelett to present the result of the *Whittle* case to the jury, and when the Superior Court provided the State with additional time to review the impeachment material with the consent of trial counsel.

Standard and Scope of Review

This Court reviews "claims of constitutional errors *de novo*."⁷ This Court reviews "a trial judge's rulings limiting evidence of a witness's prior conduct for abuse of discretion."⁸

⁷ *Wilkerson v. State*, 953 A.2d 152, 156 (Del. 2008) (citing *Dahl v. State*, 926 A.2d 1077, 1081 (Del. 2007)).

⁸ *Id.* at 156 (citing *Smith v. State*, 913 A.2d 1197, 1228 (Del. 2006)).

Merits of Argument

Hazelett argues that her cross-examination and impeachment of Cpl. Moses was “greatly restricted” by the trial court, depriving her of effective cross-examination and a complete defense. Hazelett is wrong. “Impeachment evidence is material if the failure to disclose the evidence ‘undermines confidence in the outcome of the trial.’”⁹ Although “cross-examination is the ‘principal means by which the believability of a witness and the truth of his testimony are tested’”¹⁰, “the right of cross-examination is not without limits.”¹¹ “Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on ... cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness’ safety, or interrogation that is repetitive or only marginally relevant.”¹² This Court has previously held that impeachment of a witness using extrinsic instances of that witness’s conduct “is committed to the sound discretion of the trial court.”¹³ A court considers four *Snowden* factors when deciding the scope of impeachment: “(1) whether the

⁹ *Wilson v. State*, 271 A.3d 733, 740 (Del. 2022) (quoting *United States v. Bagley*, 473 U.S. 667, 678 (1985)).

¹⁰ *Snowden v. State*, 672 A.2d 1017, 1024 (Del. 1996) (quoting *Davis v. Alaska*, 415 U.S. 308, 316 (1974)).

¹¹ *Id.* at 1024.

¹² *Id.* (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

¹³ *Harper v. State*, 970 A.2d 199 (Del. 2009) (quoting *Garden v. Sutton*, 683 A.2d 1041, 1043 (Del. 1996)).

testimony of the witness being impeached is crucial; (2) the logical relevance of the specific impeachment evidence to the question at bar; (3) the danger of unfair prejudice, confusion of the issues and undue delay; and (4) whether the evidence is cumulative.”¹⁴

A. Cpl. Moses’s testimony was not crucial to the State’s case.

Hazelett avers that Cpl. Moses’s testimony was crucial to the State’s case. It was not. Although the trial court ruled that it was crucial for the limited evidence of initial car stop and for the odor of marijuana, the trial court did not expressly consider all other evidence besides Cpl. Moses’s testimony. Officer Rosaio testified that the car turned eastbound from North Madison Street to 6th Street without signaling. A44. Cpl. Moses’s interaction with Hazelett and her car after the stop is captured on BWC.¹⁵ A21. Cpl. Moses’s BWC footage could have been authenticated by either Ofc. Rosaio or Cpl. Schulz who were both on scene with Cpl. Moses.¹⁶ The BWC was admitted without objection at trial as State’s trial exhibit 2. A21. The BWC showed Cpl. Moses before he exited his police vehicle and throughout the interaction

¹⁴ *Id.* at 201 (citing *Snowden*, 672 A.2d at 1025; *Weber v. State*, 457 A.2d 674, 681 (Del. 1983)).

¹⁵ B1.

¹⁶ Delaware Rule of Evidence 901. Authenticating or Identifying Evidence. (a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

with Hazelett's car.¹⁷ Cpl. Schulz was also wearing a BWC, and his BWC captured the location of evidence found throughout the car. A35-38. Both Cpl. Moses and Cpl. Schulz testified about the odor of burnt marijuana emanating from Hazelett's car. A21; A35. Cpl. Moses testified that he observed a burning marijuana blunt near the center console. A22. Cpl. Schulz collected that burnt marijuana blunt and placed it inside of a glove. A38. Cpl. Schulz, not Cpl. Moses, was responsible for evidence collection both on scene and during a later inventory search. A34-38. Hazelett suggests that Cpl. Moses "was essential to establishing the chain of custody of the marijuana"¹⁸ but neglects to specify how he was essential.

Notably, Hazelett's defense did not contest the presence of the firearm and drugs in the car. Trial counsel told the jury in her opening statement that Hazelett possessed the firearm. A16-18. She stated, "the question before you today is whether Ms. Hazelett, on March 2nd, 2022 knowingly and unlawfully possessed both a firearm and drugs together." A17. Hazelett's defense was that she was unaware of the presence of drugs in the car. Cpl. Schulz located the drugs throughout the car, in both the front and back seats and next to the emergency brake contiguous to where Hazelett sat as the driver. Both Cpl. Moses and Cpl. Schulz smelled an odor of marijuana from the car. The locations of the drugs were captured by both Cpl.

¹⁷ B1.

¹⁸ Op. Brief at 12.

Moses's and Cpl. Schulz's BWC. Cpl. Schulz collected the pill bottle bearing Brianna Hazelett's name and containing methamphetamine from the cross-body satchel. A39 Hazelett ignores the BWC video and Cpl. Schulz's and Officer Rosaio's testimony to argue that Cpl. Moses was a crucial witness. He was not.

B. Hazelett was able to effectively attempt to impeach Cpl. Moses's credibility with his actions in the *Whittle* case and the trial judge did not "greatly restrict" her cross-examination.

Hazelett frames her entire argument on appeal around the concept that she was not able to impeach Cpl. Moses as she desired. She argues that she "sought to impeach Officer Moses using material which provided a logical basis for a jury to question Moses's credibility" and that the trial court "greatly restricted" her opportunity to present a complete defense.¹⁹ Not so. Hazelett conceded that although she claims she was "greatly restricted," "the exact parameters of the trial court's ruling are not perfectly clear."²⁰ The trial judge asked trial counsel about her proposed line of questioning for Cpl. Moses. Trial counsel responded:

My intent is to ask about what he swore in the affidavit, I plan on using his own language, what he testified to in the preliminary hearing, using his own language, and what he testified to at the trial, in his own language, and leave it at that. Obviously I will be asking him questions about the importance of telling the truth and the fact that he did swear to tell the truth in all of those proceedings. But I'm not planning on getting deep into the facts of each of the cases, or that case specifically. I don't think delving too deeply into the facts is relevant. A55.

¹⁹ Op. Brief at 12-13.

²⁰ Op. Brief at 3.

The court agreed with these proposed parameters. A55. Trial counsel was able to inquire in all of these areas without restriction. Hazelett does not aver that the court limited this proposed line of questioning. The record reflects that trial counsel was able to ask Cpl. Moses each of the questions she proposed without a State's objection or court restriction. A71-72. She asked him about sworn affidavits of probable cause and the value of truthfulness in those documents. A71. She asked him about swearing to tell the truth in preliminary hearings and in the instant trial. A71. She asked about the importance of truth in both sworn documents and testimony. A72. Hazelett confronted Cpl. Moses with his specific acts in the *Whittle* case, including that his trial testimony contradicted his sworn arrest warrant and preliminary hearing testimony. A72. At the close of trial counsel's recross-examination, she preserved an objection to the court's ruling that counsel could not ask Cpl. Moses about the disposition of the *Whittle* case. She clarified that she wanted to ask "solely whether or not the case was dismissed." A74. The judge expressed concern for jury confusion because *Whittle* was technically dismissed for hearsay, but was willing to consider the request "if it is a question that will not tend to mislead the jury." A75. Trial counsel did not offer an alternative.

The only limitation that the court placed on Hazelett's proposed cross-examination and argument to the jury was precluding questioning about the *Whittle* trial result due to the danger of misleading the jury. The trial court did not permit

trial counsel to ask about the *Whittle* result because *Whittle* was dismissed due to hearsay, not because of Cpl. Moses's contradictory testimony. Any other result significantly risked confusing the jury.

C. The trial court's expectation that Hazelett notify the State of her impeachment material resulted in no prejudice

Next, Hazelett argues that the trial court's expectation that she notify the State of her strategy to impeach Cpl. Moses resulted in impeachment restrictions. Hazelett is incorrect and her argument lacks record support. First, the State agrees that Hazelett was under no obligation to provide the State with impeachment material prior to cross-examination. The prosecutor should not have argued otherwise. However, a more complete reading of the record is required to understand the trial court's stance. While Hazelett had no obligation to provide the impeachment material to the State in this case, her trial counsel had obligations to the court. The court scheduled the length of trial and communicated this to the jury based upon pretrial discussions with counsel about trial and potential issues. The court explained this once the impeachment issue was brought to light:

TRIAL COURT: Because we've got a jury, we were just on break, and so we have a jury sitting there, we told them it was going to be a one, possibly two, thank goodness I voir-dired till Wednesday. But this is all part of the reason why I ask counsel to get together, if there's any issues that are going to be raised in pretrial, but that's a discussion for another time. A33.

This issue was not anticipated by the trial judge. There is tension between trial counsel's desire to provide the best strategic result for Hazelett and also meet her

responsibilities to the court. It was best practice for trial counsel to notify the trial judge and the prosecutor pretrial or, at minimum, prior to jury selection so that the court could adequately prepare, decide the issues, and schedule the trial based upon the pretrial ruling. Trial counsel acknowledged that she had the transcript from *Mobley*. A33. Trial counsel told the trial court that, “I believe another court, or (the judge in *Mobley*) has made a finding that it was accidental, but (the judge in *Mobley*) is not the fact-finder in this case, the credibility is solely up to this jury.” A33. Trial counsel should have advised the trial court in advance of jury selection, especially when she believed that the court previously ruled Cpl. Moses’s contradictory statements to be “accidental.”

The court addressed this issue again later:

And counsel on both sides were asked repeatedly whether there’s any issues that needed to be discussed, whether there’s 609 issues is usually something that is greatly discussed. And so it is not out of the realm for the Court to expect that impeachment issues are brought up pretrial and discussed, just like witness lists are exchanged by both sides prior to jury selection, you know, we play fair in this court.

And dropping 195 pages of documents doesn’t quite fall into that category for me, especially when there was a request when we discussed redactions and the flow of trial, and there was a request from defense that no recordings be played, if the State had redacted them and did them over the weekend, there was a request that was granted to say if it wasn’t done and you didn’t have enough time to review them, I was going to give you and afford you the time to review all of the documents to ensure they were redacted to protect your client’s rights. So I don’t see any prejudice to the defense by letting the State have overnight to review this. A58.

Trial counsel was not required to provide the impeachment materials to the State in advance, but trial counsel should have notified the court about this potential issue because it could impact scheduling and the length of the trial. The court's frustration was understandable.

To be clear, the State was not entitled to additional time for review the impeachment documents. Ultimately, trial counsel did not oppose the prosecutor's request for additional time to review the impeachment documents. A43. The following day, trial counsel cross-examined Cpl. Moses as she desired, save for the *Whittle* trial result. Hazelett has not pointed to any specific prejudice because of the timing of the cross-examination and the record reflects no prejudice.

D. The trial court properly read the record and finding in *Whittle*.

Hazelett next argues that the trial court misread the record in finding that the *Whittle* court made no finding of dishonesty.²¹ The trial court's review of the record was accurate. After striking Cpl. Moses's testimony as hearsay, the *Whittle* court granted the motion for judgment of acquittal "because the court believes that the State hasn't produced any sufficient reliable evidence." A125. The *Whittle* court's concern about Cpl. Moses's contradictory testimony is reflected in its request that the prosecutor bring the matter to the attention of Cpl. Moses's superiors. A125. However, the Superior Court was accurate that there was no formal finding of

²¹ Op. Brief at 18.

untruthfulness by the *Whittle* trial court. Nevertheless, here, the trial court recognized the impeachment value of Cpl. Moses's contradictory testimony and permitted Hazelett to cross-examine him about it.

Hazelett avers that she “should have been free to argue and attempt to establish the impeaching ‘logical conclusion[s]’ for the jury.”²² Again, Hazelett fails to specify what conclusions she was prohibited from arguing. The trial court advised the parties that the court “will not allow...any sort of inference to be made to the jury that the *Whittle* case was dismissed because of [untruthfulness].” A57. The court continued, “But, again, the defense is not allowed to give the impression that there was any sort of finding of dishonesty, and certainly cannot leave the impression that a case was dismissed because of a finding of dishonesty.” A57. Trial counsel was able to effectively use Cpl. Moses's actions in *Whittle* to cast doubt upon his observations and testimony. In closing argument, she attacked his veracity with the facts of the instant case: “Corporal Moses testified that he saw the marijuana joint in the ashtray, but that contradicts testimony from the other officers and the photos that you’ve seen from the body cam.” A86. She later connected this to Cpl. Moses's actions in *Whittle*:

Can you trust the police? On direct examination, the State did not ask Cpl. Moses about when he testified under oath, just like he did in this trial, about seeing a crime with his eyes that he later testified that he did not see in person. What else don't you know about? You are the sole judges of

²² Op. Brief at 19.

credibility in this case, just as [the prosecutor] told you, you have to make a decision about whether these officers are credible. A87.

Thus, trial counsel was not only able to use Cpl. Moses's actions to attack his credibility, but she also amplified it to effectively impute his purported lack of credibility to all the police officers in the case.

E. The trial court permitted Hazelett to cross-examine Cpl. Moses despite a lack of any known police-imposed discipline.

Hazelett argues that the Superior Court erred when it restricted her use of impeachment material based the lack of discipline by Cpl. Moses's police agency. She suggests that the court improperly relied upon *Tilghman v. State*.²³ Hazelett misapprehends the trial court's ruling. The trial court's use of *Tilghman* came in response to trial counsel expressing her desire to ask Cpl. Moses about the conclusion of *Whittle*. However, in *Tilghman* the Superior Court declined to permit cross-examination of a police officer for alleged untruthfulness in an unrelated case.²⁴ The *Tilghman* court relied upon the officer's administrative exoneration and continued law enforcement employment to *preclude* cross-examination of the alleged dishonesty. By contrast, the trial court *permitted* cross-examination of Cpl. Moses about the facts in *Whittle*. After citing to *Tilghman*, the judge explained:

So I'm going to ask you, because I also think, especially given some of the arguments that were brought out again today, that I said that I think

²³ 2010 WL 703055 (Del. Feb. 25, 2010).

²⁴ *Id.*

that his credibility comes into issue with respect to the observation prior to the body-worn camera. And I'm not sure if I articulated yesterday that I also think his credibility is at issue for that odor of marijuana that was smelled. And the defendant clearly did testify that she said it was cigarette smoke. So those go to my reasons why it was relevant and the testimony should be allowed. A74.

To the extent that Hazelett suggests that the trial court advanced *Tilghman* for the proposition that it restricted her ability to ask about the *Whittle* result, the reasoning for not allowing mention of the resolution of *Whittle* due to possible jury confusion has been discussed *inter alia*.

F. The court did not prevent Hazelett from arguing that the State failed to prove the elements of a turn signal violation beyond a reasonable doubt.

Similarly, Hazelett also suggests that the court erred by precluding argument that Cpl. Moses's testimony about the turn signal violation was not true.²⁵ Again, a contextual reading of the record is required. The court ruled that because portions of the case prior to the stop were not captured on BWC video, cross-examination of Cpl. Moses related to *Whittle* was relevant. A57. The judge stated:

I do think the fact that there's body-worn camera here, it cuts both ways, it does cut against the risk of confusion, because we have body-worn camera, and that -- and there is video evidence that the jury can look at, and we are looking at a small portion that was not captured that the testimony would be relevant to. A57.

²⁵ Op. Brief at 20.

The judge continued:

But that is my ruling that I do find that it is, arguably, ...relevant because of there's some, that some issues that are not captured on body-worn camera.

I see your point... about the turn -- it is not exactly arguing a motion to suppress, because that too is not allowed, there will be no tolerance for any argument that the stop should not have been made, because this is not a motion to suppress, but there is a turn signal violation that is before the jury and that is before their consideration. A57.

The court was clarifying that Hazelett could not argue the justification for the stop, akin to a motion to suppress, but could argue that the State had not met its burden to prove the elements of the turn signal violation beyond a reasonable doubt. The trial court again clarified this later when prompted by the State for the parameters of discussing the traffic violation:

Well, I asked [trial counsel] at the, at the beginning of one of our discussions this afternoon I asked her what she was planning to explore on this line of questioning, and, you know, she answered very limited. And so, you know, obviously there can't be any argument that it was an improper illegal stop. But there are, you know, there are, it's a turn signal violation here, and it was testified to that that was the basis of the stop, you know, whatever inferences can be appropriately argued, I expect that all parties will stay within that.

But, you know, it certainly can't be argued that they had no right to stop them. And I don't, I'm not assuming that that's what [trial counsel] was doing there. And I didn't hear that argument. You know, obviously we discussed this, so I heard the argument that was made, but I did not get the sense that it was, that it crossed the line into arguing a motion to suppress land. But I think we are all mindful of that, and that I think we all know that that is not proper at this stage of the proceeding to do. A64.

Hazelett was not precluded from arguing that the State had not met its burden to prove the elements of the turn signal violation, but she was not permitted to argue that the stop was not legally justified. As previously noted, Cpl. Moses was not the sole witness to the turn signal violation. Officer Rosaio testified that Hazelett made a turn onto 6th Street from North Madison Street without signaling. A44.

G. The court appropriately restricted the inference from the *Whittle* resolution.

Finally, Hazelett argues that the trial court failed to consider the two additional factors set forth in *Snowden*:

(1) if the jury was exposed to facts sufficient for it to draw inferences as to the reliability of the witness and (2) if defense counsel had an adequate record from which to argue why the witness might have been biased....²⁶

The trial court assessed the four primary *Snowden* factors. As the court noted, there was a portion not captured by BWC that would be relevant. A56. The court found the *Whittle* testimony had logical relevance to this portion. A56. On the third factor, the court limited the discussion of the *Whittle* dismissal based on the “risk of confusion.” A57. The court also ruled that it was not cumulative because “it is the first of its kind that will be potentially introduced.” A55. As to the first additional factor, as has been discussed, the jury was exposed to facts sufficient to determine

²⁶ 672 A.2d at 1025 (quoting *Weber*, 457 A.2d at 682).

Cpl. Moses's credibility when trial counsel was permitted to ask her proposed line of questioning. Trial counsel also had an adequate record to question Cpl. Moses about his actions in *Whittle*. Again, the only area that was limited was the *Whittle* resolution.

Hazelett suggests that the trial court found in favor of the State on the third *Snowden* factor "in finding that Hazelett's impeachment tactic caused undue delay, was unfairly prejudicial, and risked confusing the jury."²⁷ Hazelett's reading of the court's decision is a generous one. The court certainly mentioned delay. When it began addressing the third factor, the judge stated:

The danger of unfair prejudice is the third factor, unfair prejudice, confusion of the issues, and undue delay. We're already into the delay part. And hearing the number of questions, it doesn't seem like it will be too extensive, but obviously there's always a danger of prejudice and confusing of the issues when we insert something else, it's just whether or not it rises to the level of unfair prejudice, and whether or not the evidence is cumulative, which is certainly not cumulative here because it is the first of its kind that will be potentially introduced. So, with that, I would like to read the transcript myself of -- do you have another copy of Judge Wallace's transcript? A55.

The judge then heard from the State on the danger of unfair prejudice, confusion of the issues and undue delay. A56. The State argued the danger of unfair prejudice and confusion of the issues, but not delay. A56-57. The trial court then ruled it would allow "very minimal questioning along this line" for two reasons- "relevance,

²⁷ Op. Brief at 22.

and the risk of confusion, because there is a danger of unfair prejudice here.” A57.

Delay was not mentioned by the judge in her holding. The judge made clear that she was referring to the *Whittle* result with her next statement:

I will -- because I have no evidence before me that there was a finding of untruthfulness, I will not allow that language to be used. And so I also will not allow any questioning and any sort of inference to be made to the jury that the *Whittle* case was dismissed because of this. Because the *Whittle* case, it was tangential, but the *Whittle* case was dismissed because there was not a sufficient basis, and it was simply only hearsay in the record at that point in time, and the State had rested its case. A57.

Hazelett continues to suggest that the court erred when it did not allow her to cross-examine Cpl. Moses about the motion for judgment of acquittal in *Whittle*. Hazelett ignores that she was permitted to cross-examine and impeach Cpl. Moses exactly as trial counsel initially requested initially. A55. She neglects to say, however, how she would cross-examine Cpl. Moses on the *Whittle* disposition. Cpl. Moses could only testify that the motion for judgment of acquittal was granted after the court struck his testimony as hearsay, as the *Whittle* court ruled. If Hazelett wanted the trial court to find that *Whittle* was dismissed due to Cpl. Moses’s contradictory statements, she asks the trial court to create an impermissible legal fiction. The trial court took the only action it could- it permitted cross-examination of Cpl. Moses as trial counsel requested and limited any inference to the letter of the *Whittle* court’s ruling.

The trial court did not abuse its discretion or commit other error. It allowed Hazelett the cross-examination that she sought regarding Cpl. Moses's actions. The court appropriately declined to fashion a ruling regarding *Whittle* that was contrary to the case's procedural history. Hazelett suffered no prejudice as a result.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

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Dated: September 20, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIANA HAZELETT)	
)	
Defendant-Below,)	
Appellant,)	
)	
v.)	No. 152, 2024
)	
)	
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.

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DATE: September 20, 2024