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Case Number 268,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWAYNE L. PEARSON Defendant Below- Appellant, v. STATE OF DELAWARE, Plaintiff Below- Appellee.	)))))))))))	No. 268, 2024 On appeal from the Superior Court of the State of Delaware

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

STATE'S ANSWERING BRIEF

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Dated: December 12, 2024

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NATURE AND STAGE OF THE PROCEEDINGS

On January 12, 2023, police arrested Dwayne Pearson ("Pearson") for sex offenses involving a minor. A1 at D.I. 1. On March 27, 2023, a grand jury indicted Pearson for two counts of Sexual Abuse of a Child by a Person in a Position of Trust Authority or Supervision ("SACPPT") First Degree, Rape Second Degree, Unlawful Sexual Contact Second Degree, Rape Fourth Degree, and SACPPT Second Degree. A1 at D.I. 3; A7-14. Pearson had a jury trial from January 22 through January 26, 2024. A4 at D.I. 22. The Superior Court held a 5-day jury trial from January 22 through January 26, 2024. A4 at D.I. 22. At the conclusion of the State's case-in-chief, Pearson moved for judgment of acquittal on the SACPPT charges, arguing that there was insufficient evidence that he was a person in a position of trust, authority or supervision and the trial court reserved decision. A4 at D.I. 22; A141. The jury subsequently found Pearson guilty of all charges. A4 at D.I. 22.

Immediately after the jury's verdict, Pearson renewed his motion for judgment of acquittal, and the court requested written submissions. A162. On February 13, 2024, Pearson filed his written motion for judgment of acquittal. A4 at D.I. 25; A163-173. On March 26, 2024, the State filed a response. A5 at D.I. 29;

A174-178. The trial court denied Pearson's motion on June 10, 2024.[1] A5 at D.I. 34.

On June 14, 2024, the Superior Court sentenced Pearson to an aggregate of thirty-five years at Level V, followed by decreasing levels of supervision.[2] A6 at D.I. 34.

Pearson timely filed his Opening Brief. This is the State's Answering Brief.

[1] *State v. Pearson*, 2024 WL 2891171 (Del. Super. Ct. June 10, 2024).
[2] Op. Br. Exhibit C.

SUMMARY OF THE ARGUMENT

I. Appellant's argument is DENIED. The Superior Court properly denied Pearson's motion for judgment of acquittal. Viewing the evidence in the light most favorable to the prosecution, the evidence presented at trial was sufficient for a rational trier of fact to find that Pearson stood in a position of trust, authority or supervision over M.M. under 11 *Del. C.* § 761. Alternatively, the evidence at trial was sufficient for a rational trier of fact to find under 11 *Del. C.* § 778(1) and (2) and 778A(1) that Pearson was "an invitee or designee of a person who [stood] in a position of trust, authority or supervision over [M.M.]."

II. Appellant's argument is DENIED. 11 *Del. C.* § 761 is not unconstitutionally vague, nor is it vague in its application to Pearson, because it employs "includes, but is not limited to" language. Pearson had notice that he was a person in a position of trust, authority, or supervision. A person of ordinary intelligence would understand the meaning and application of the proscribed conduct.

STATEMENT OF FACTS

Mill Creek Fire Company ("Mill Creek") is a fire company in New Castle County and is one of approximately 25 volunteer fire companies in Delaware. A16. Mill Creek is independently incorporated, managed, and governed. A16. Mill Creek handles both ambulance service and fire operations. A17. Both ambulance and fire operations fall under the direction of Chief Nicholas Baronie ("Baronie"). A17. Mill Creek encourages a family culture where there is trust between members. A17.

Mill Creek has a junior firefighter program for young adults to provide the structure and training to become a firefighter. A18. Junior firefighters can start their training when they are 15 years old. A19. The program has a voting process for admission that includes an interview before a membership committee. A20. Baronie testified that most fire companies have a very similar junior firefighter program with minor differences. A20.

Once voted in, junior firefighters must go through a training process before they can ride in fire engines. A21. In addition to fire engines, Mill Creek has "command vehicles" for chief officers and pick-up trucks for day-to-day use. A21.

M.M.[3], who turned 15 in April 2022, was voted in to Mill Creek as a junior firefighter on May 16, 2022. A29. Being a firefighter was M.M.'s dream, and she

[3] The State has assigned "M.M." as a pseudonym for the minor victim in this case pursuant to Supr. Ct. R. 7(d).

had planned her career path out until adulthood. A30. M.M.'s designated mentor at Mill Creek was senior firefighter Joe Garone ("Garone"). A23. At Mill Creek, communication was encouraged through a work platform so that it could be tracked through the department. A23. Fraternization outside of work in a senior-junior firefighter mentorship, like that of M.M. and Garone, was frowned upon. A24.

On July 16, 2022, a joint training took place in West Chester, Pennsylvania between Mill Creek and the Belvedere Fire Company ("Belvedere"). A45. This was M.M.'s first time interacting with members from Belvedere one-on-one. A45. M.M., who was still then 15 years old, met Pearson, a Belvedere Deputy Fire Chief, at the training and discussed school, how old she was, the grade she was in, and how long she had been at Mill Creek. A47. M.M. knew Pearson was "high up" and believed he was a fire chief. A47. Pearson shared firefighting-related information with M.M. and invited M.M. to go into a fire with him. A48. The conversations with Pearson were important to M.M. because she had never talked to Chief Baronie and felt that, "it's kind of crazy that another chief of another fire company is talking to me." A48. M.M. saw Pearson as a potential mentor and thought she could learn a lot from him. A49. While at the training, there was a photo taken of M.M. wearing Pearson's sunglasses on her head. A50.

When the training ended, Mill Creek personnel went to Belvedere for lunch. A51. While there, M.M. went to use the bathroom, and Pearson approached her and

slid his hand across her stomach. A53-54. M.M. had no other interactions with Pearson at Belvedere before she returned to Mill Creek. A54.

Belvedere Chief Rob Johnson ("Johnson") took photographs of the West Chester training, including two photos of Pearson and M.M. together. A146. Johnson sent them to Baronie, and Baronie contacted Johnson and told him that M.M. was "underage." A146-148. Johnson responded that he would handle it. A150. To make sure that Pearson left M.M. alone, Johnson told Pearson that M.M was "underage." A150, A152. Pearson told Johnson, "Oh, I didn't know."

M.M. next encountered Pearson when Belvedere covered Mill Creeks area after a loss of one of Mill Creek's firefighters. A55. M.M. arrived at Mill Creek to learn that she was the only Mill Creek member going on calls. A56. M.M. went on a call with another department, and when she returned, Pearson was at Mill Creek. A57-58. M.M. went into the radio room, and Pearson was there. A59. M.M. spoke with Pearson about firefighting before Pearson "turned it into more of a sexual thing." A58-59. While in the radio room, Pearson told M.M. that he wanted to pin her up against the wall, choke her, and kiss her. A61. Pearson also looked at the Instagram app on M.M.'s phone. A63. He asked for M.M.'s Snapchat, and when she provided it to him, he added it on his phone. A65. During this interaction, Pearson also touched her thigh. A65. On that same day, while in the station's library/game room, M.M. was on a Facetime call with a friend and sitting on a chair

without a cushion. A66-67. Pearson told M.M. that she could use his lap as a cushion. A67. Despite the sexual advances in the firehouse, M.M. continued to talk to Pearson because she looked at him as someone she could learn from. A62.

M.M. and Pearson subsequently communicated through Snapchat. A68. On August 18, 2022, after texts and calls were exchanged, Pearson told M.M. that he was driving to her when she was working at the Mill Creek firehouse. A70; A84; A95. For Belvedere firefighters, they would only pick up junior firefighters or cadets for a specific purpose related to being a firefighter, although there was no specific Belvedere ruling against having contact with junior firefighters from Belvedere or any other company. A153.

M.M. agreed to meet Pearson at the Dunkin' Donuts adjacent to the Mill Creek station. A69-70. M.M. believed that they were going to "talk and chill." A71. Pearson told her he would be in a truck and described the truck. A71. When M.M. got into the truck, she realized it was a work truck because it had Belvedere signs and symbols on the doors. A72. After Pearson picked her up from the Dunkin' Donuts parking lot, they traveled approximately five minutes to a parking lot that Pearson selected. A74-75. M.M. did not know where they were going until they arrived. A74. There were no other cars or people in the parking lot, and Pearson told M.M. that there were no cameras there. A76-78.

When they arrived, Pearson told M.M. to get out of the truck. A79. Pearson came around to the passenger side where M.M. was and opened both the front and rear passenger doors. A79. Once they were positioned between the open doors, Pearson kissed M.M. and then pulled down his pants and asked her to perform oral sex on him. A79. She refused, so Pearson placed her hand on his penis and guided her hand back and forth over his penis until he ejaculated. A80-81. They cleaned up, got back in the truck, and returned to Dunkin' Donuts. A82. After they arrived at Dunkin' Donuts, M.M. returned to Mill Creek and went back to work. A83.

Pearson communicated with M.M. after the August 18, 2022 incident, talking to her every day and "texting 24/7." A84. Pearson told M.M. that he wanted to see her again. A85. She initially told him "No" and explained to him that "everything was sexual, that he did not really care, and that it was all just a game to him." A85. Pearson apologized, and M.M. ultimately agreed to see Pearson again. A86. She did not think it would be sexual because she told him that she did not want to engage in that kind of behavior again. A86.

On August 24, 2022, Pearson picked up M.M. near the Fulton Bank that was also adjacent to Mill Creek. A87-88; A94. Again, Pearson took M.M. to a parking lot, this time to the back of the old Mill Creek station. A90-91. Once they stopped, Pearson told her to get out, and he came over to her side of the truck. A92. Leaving the front passenger door open, Pearson also opened the rear passenger door. A96.

Once Pearson and M.M. were positioned between the opened passenger side doors, Pearson kissed M.M., and they started making out. A92. Pearson stuck his hands down M.M.'s pants and "started fingering [her], which his fingers were inside of [her]." A92. Pearson then unbuckled his pants, turned M.M. around, bent her over, and "stuck it in, his penis inside [her]." A93. The truck doors were blocking them from view. A93. Sex concluded with Pearson pushing M.M. away and ejaculating on the ground. A103. Afterward, they got back in the truck, Pearson dropped M.M. off where he picked her up, and M.M. returned to Mill Creek. A104.

Pearson reached out to M.M. after the second incident. A106. They spoke via Snapchat video chats. A107. On September 11, 2022, Pearson told M.M. that it was urgent, and she needed to call him. A108. M.M. went to her mother's car and called Pearson. A110. He told her that there was a report or allegation involving both of them and to delete all evidence of the two of them together. A114. Pearson told her to lie or not tell anyone what happened and to deny it. A111. Pearson told M.M. that it would destroy her career at the firehouse because she would not be able to be a member of any firehouse and it would go on her record. A111. He told her it would protect both of them. A112. He asked M.M. to remove him on Snapchat and to remove all their call history logs, and M.M. did so. A113. M.M. was told to block him on Snapchat and then add him back a week later. A115. M.M. added Pearson back on Snapchat on September 18, 2022. A115.

After M.M. added Pearson back on Snapchat, they spoke again via video chat while she was at the beach. A117. Pearson told her that if anything was brought up, to continue to lie. A117. Subsequently, M.M. learned that Pearson moved in with a female friend, and she became upset and heartbroken. A118-119.

M.M.'s sister was also intent on joining Mill Creek and her vote-in date was September 19, 2022. A31. M.M.'s mother was at Mill Creek for the meeting and was approached by the Chief and President who expressed concern that M.M. was seen on a Belvedere vehicle two weeks before. A32. M.M.'s mother asked M.M. about her contact with a chief from Belvedere, and M.M. said Pearson kissed her. A37-38. M.M.'s mother told her that the entire story would come out, so M.M. told her mother and sister about the sexual intercourse. A123-124. Afterwards, M.M.'s mother brought her to the police station. A124. A detective informed M.M. that Pearson had been in a long-term relationship. A125.

On September 26, 2022, police interviewed Pearson. B1[4]. Pearson admitted that he drove a Belvedere Fire Department 2022 black Chevrolet Silverado pick-up.[5] He admitted to meeting M.M at training and to talking to her in the Mill Creek radio room while Belvedere provided coverage.[6] Pearson admitted that he and M.M.

[4] B1 is the redacted video interview of Pearson that was admitted at trial.
[5] B1 at 4:40.
[6] B1 at 6:42; 32:48.

became friends on Snapchat and would typically talk on the application.[7] Pearson denied any sexual contact with M.M.[8] He did admit picking her up for a ride in his truck that lasted 32 minutes.[9] Pearson said he thought it was smart to take her for a ride in his truck because she was a junior firefighter in another company.[10]

[7] B1 at 10:05; 16:40.
[8] B1 at 23:05; 23:30; 29:43.
[9] B1 at 11:40; 12:20; 19:35; 28:55.
[10] B1 at 27:34.

ARGUMENT

I. THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT FOR A RATIONAL TRIER OF FACT TO FIND THAT PEARSON WAS A PERSON IN A POSITION OF TRUST, AUTHORITY, OR SUPERVISION OVER M.M. PURSUANT TO 11 *DEL. C.* § 761(e).

Question Presented

Whether the State presented sufficient evidence that Pearson stood in a "position of trust, authority or supervision over [M.M.]," when viewed in the light most favorable to the State, for any rational trier of fact to have found Pearson guilty of SACPPT beyond a reasonable doubt.

Standard and Scope of Review

This Court reviews the Superior Court's denial of a motion for judgment of acquittal *de novo* to determine whether a rational trier of fact, viewing the evidence most favorable to the State, could have found the essential elements, beyond a reasonable doubt.[11] In making this inquiry, this Court does not distinguish between direct and circumstantial evidence.[12]

[11] *Robinson v. State*, 953 A.2d 169, 173 (Del. 2008).

[12] *Id.*

Merits of Argument

After the jury's verdict, Pearson moved for judgment of acquittal notwithstanding the verdict pursuant to Superior Court Criminal Rule 29(c) on the grounds that the State failed to adduce evidence from which a jury could consider, even in the light most favorable to the State, that he was a person in a position of trust, authority or supervision. A165. The Superior Court rejected Pearson's arguments, finding that there was sufficient evidence to allow the jury to find that Pearson was "in a position of trust, authority or supervision."[13] The court explained:

> The following facts were educed from the testimony and evidence at trial that support Mr. Pearson was "in a position of trust ... because of [his] employment/volunteer [and had] regular direct contact with the child ... in the course of [his] assumed responsibility, whether temporarily or permanently." (1) Mr. Pearson was a Deputy Fire Chief of the Belvedere Fire Company when he met M.M. at a joint training with Mill Creek Fire Company, where M.M. volunteered as a junior fire fighter; (2) M.M. admired Mr. Pearson and had aspirations for him to become her mentor or help her with her career in firefighting; (3) M.M. met Mr. Pearson a second time in his official capacity as Deputy Fire Chief when he volunteered at Mill Creek Fire Company where M.M. was stationed; (4) while acting in his official Capacity as Deputy Fire Chief, Mr. Pearson engaged in inappropriate communications with the M.M. while she was a volunteer; (5) Mr. Pearson and M.M. exchanged social media profile information while he worked in his capacity at Belvedere Fire Company; (6) Mr. Pearson engaged in ongoing communications with M.M. through Snapchat; (7) Mr. Pearson's continued communications with M.M. through Snapchat resulted in Mr. Pearson meeting M.M. in a Dunkin Donuts parking lot next to Mill Creek Fire Company when she was actively volunteering; (8) M.M. testified and surveillance footage confirms that she went for a ride in Mr. Pearson's Belvedere fire company vehicle when she was

[13] *Pearson*, 2024 WL 2891171, at *3.

> actively volunteering with Mill Creek Fire Company; (9) M.M. testified Mr. Pearson met her a second time, as M.M. was actively volunteering, and drove M.M. to a nearby secluded parking lot on Mill Creek Fire Company property.
>
> The facts on the record support that Mr. Pearson met with M.M. while actively working in the capacity as a Deputy Chief of Belvedere Fire Company and holding himself out to the public and M.M. that he maintained a degree of responsibility over M.M. in his official capacity as Deputy Chief of Belvedere Fire Company. The facts on the record indicate that Mr. Pearson, while working in his capacity as a Deputy Chief of the Belvedere Fire Company, is included in the nonexclusive list enumerated in 11 Del. C. § 761(e)(7) as a "person in a position of trust ... because of [his] profession, employment ... or volunteer service [and had] regular direct contact with the child ... in the course of [his] assumed responsibility, whether temporarily or permanently." Thus, the challenged list in 11 Del. C. § 761(e) is inclusive of the behavior that defines a "person in a position of trust.[14]

On appeal, Pearson claims the Superior Court erred in refusing to grant his motion for judgment of acquittal, because there was insufficient evidence presented by the State for the trial court to find that he was a person in a "position of trust, authority or supervision" over M.M., a necessary element of SACPPT, and thus his convictions and sentences for SACPPT should be vacated.[15] Pearson's argument is unavailing.

The State charged Pearson with three offenses where he was alleged to be a person in a position of trust, authority or supervision — Count 1, SACPPT in the

[14] *Id.*
[15] Op. Br. ___.

First Degree; Count 3, SACPPT in the First Degree; and Count 5, SACPPT in the Second Degree. A7-9. Counts 1 and 3 involved conduct that occurred on August 24, 2022, and Count 5 involved conduct that occurred on August 18, 2022. A7-9.

To prove that Pearson was guilty of SACPPT under 11 *Del. C.* §§ 778 and 778A(1), the State was required to establish beyond a reasonable doubt that Pearson stood "in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child."[16] According to this Court, "[t]he testimony of a sole witness … will be sufficient to form the basis for a conviction if the testimony presented by that witness establishes every element of the offense and is found by the jury to be credible.[17]

Here, Pearson only disputes the sufficiency of the evidence proving that he stood "in a position of trust, authority or supervision," over M.M., as defined in 11 *Del. C.* § 761(e). Pearson claims that he was not a "teacher, coach, counselor, advisor, mentor, or any other person providing instructional or educational services to a child or children." He also claims that he did not assume responsibility for M.M. due to "familiar relationship, profession, employment, vocation, avocation, or

[16] 11 *Del. C.* §§ 778, 778A.

[17] *Hardin v. State*, 840 A.2d 1217, 1224 (Del. 2003).

volunteer service." Pearson is mistaken.

Title 11 § 761(e)(1-7) defines nonexclusive categories of people who are in a "position of trust, authority or supervision over a child." Specifically, section 761(e) provides that "'Position of trust, authority or supervision over a child' includes, but is not limited to:"

> (1) Familial, guardianship or custodial authority or supervision; or
>
> (2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or
>
> (3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or
>
> (4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or
>
> (5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or
>
> (6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

> (7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.[18]

Although the State requested[19] that the trial judge include all of the subsections in the jury instructions to serve as a guide for the jury (A130-44), the trial court declined to read all the section 761(e) subsections to the jury because "the evidence does not reflect in any way that these categories would be applicable," but did agree that there were two categories "that function and help them focus in on what their mission is." A143-44. The court then instructed the jury regarding subsections (e)(2) and (e)(7):

> "Position of trust, authority or supervision over a child" includes but is not limited to:
>
> A teacher, coach, counselor, advisor, mentor, or any other person providing instructional or educational services to a child or children, whether such person is compensated or acting as a volunteer;
>
> Or any person who because of that person's familiar relationship, profession, employment, vocation, avocation, or volunteer service has regular direct contact with a child or children, and in the course thereof , assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

A155-156.

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[18] 11 *Del. C.* § 761(e).

[19] Upon hearing the State's request, trial counsel advised the judge, "And I was going to make the same assertion, Your Honor." A143.

Pearson argues that the State failed to present sufficient evidence that he was a person in a position of trust, authority or supervision under these subsections and the "includes, but is not limited to" language, which Pearson calls the "'catch all' provision."[20] Not so. First, Pearson fundamentally misapprehends the statutory construction of section 761(e). Notably, the definition of "position of trust, authority or supervision over a child" is exemplary, not exclusive. As a matter of statutory construction, the words "includes, but is not limited to," are properly interpreted to indicate that the phrase "position of trust, authority or supervision over a child" encompasses items not expressly enumerated in the statute.[21]

It would be impossible for the General Assembly to define every single relationship where a person is in "a position of trust, authority or supervision of a child." Therefore, the statute provides examples of classes of persons who stand in a position of trust, authority and supervision and allows a jury to determine whether a defendant's relationship to a child is similar to one of those classes of people. The State is not required to charge a particular subsection because the statute contemplates that the position of trust, authority or supervision relationship between defendant and victim will be like one of the classes, but not specified.

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[20] Op. Br. at 12.

[21] *Burgess v. United States*, 553 U.S. 124, 131 n. 3 (2008) (*quoting* 2A Norman J. Singer & J.D. Shambie Singer, Sutherland Statutes and Statutory Construction § 47:7 (7th ed. 2007)).

Thus, Pearson's argument that the State tried to "convince the jury that it could find [Pearson] was in some position of trust other than the two defined by the court" is unavailing. The prosecutor told the jury:

> But it's not limited to [§ 761 (6) (e) (2) & (7)]. And that's important for you to think about. And I say it's important to think about only in the event that you do not think that the Defendant falls into one of those categories that were read and that are included in your instruction. Ordinarily, when someone is in a position of trust or authority or supervision, it can be held by any person having direct contact with the child due to the nature of their role, and the way they show position of power, the way they show authority and control over that child. And it can be permanent; it can be temporary.

A157.

The prosecutor did not expand beyond the categories the court provided to the jury. The prosecutor properly applied the modifying language to the relevant categories. The evidence, in the light most favorable to the State, sufficiently showed that Pearson stood in a position of trust, authority or supervision over M.M. as exemplified by, but not limited to the categories in 11 *Del. C.* §761(e)(2) and (e)(7).

A. The State Presented Sufficient Evidence that Pearson was a Person Who Stood in a Position of Trust, Authority or Supervision over M.M. under 11 *Del. C.* § 761(e)(2).

Pearson argues that the State failed to present sufficient evidence that he was "a teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer" under section 761(e)(2). Not so. As the prosecutor argued during closing arguments (A157-59), the State presented sufficient evidence for a rational fact-finder, viewing the evidence in the light most favorable to the State, to find beyond a reasonable doubt that Pearson stood in a "position of trust, authority or supervision" over M.M. under section 761(e)(2).

The State presented evidence that Pearson was a Belvedere Deputy Chief when he met M.M., who was a junior firefighter at Mill Creek, at a joint fire training between the departments. B1 at 3:30; A18; A45-51. Pearson invited M.M. to accompany him into a burning building during the training. A48. The thought of a chief from another department talking to her made M.M. feel special. A48-49. M.M. admired Pearson as an authority figure and thought he could be a possible mentor. A49. She saw him as someone she could learn from. A62. Pearson was present at Mill Creek when Belvedere provided coverage after a firefighter went down. A58. M.M. was the only Mill Creek person there. A56. While there for the coverage duty, Pearson was in the radio room with M.M. A59. Pearson obtained

M.M.'s Snapchat information and made inappropriate comments to her. A65; A61; A67. He used this information obtained in this role to contact M.M. on Snapchat and propose a meeting while she was working at Mill Creek. A68-69. Pearson arrived in a Belvedere Fire Department vehicle that bore official badging. A71-72. M.M. thought they would only talk and "chill". A71. Pearson drove M.M. to the location where he sexually abused her in the Belvedere vehicle and returned her to her duty at Mill Creek in the same truck. A73-83. On the second occasion, Pearson again picked up M.M. in the Belvedere vehicle from her duty at Mill Creek, sexually abused her in the parking lot of the old Mill Creek station, then returned he to her duty at Mill Creek. A87-104. When Pearson spoke with M.M. on September 11, 2022, he told her to deny allegations because they could destroy her career as a firefighter. A111. Pearson was in leadership position versus M.M., who was a new junior firefighter. He acted as a mentor, advisor, and counselor for M.M., while providing instruction and educational services to her on firefighting. Pearson leveraged these roles to put M.M. in a position where he could sexually abuse her.

Pearson argues that the State erroneously characterized Pearson as M.M.'s mentor. Her designated mentor at Mill Creek was Joe Garone. A23. A mentor is defined as "a trusted counselor or guide."[22] When M.M. met Pearson at the joint fire

[22] https://www.merriam-webster.com/dictionary/mentor

training, she said her made her feel "special". A48-49. She thought he could be a potential mentor for her in the future and thought she could learn a lot from him. A49. That fact that M.M. saw Pearson as a potential mentor and someone she could learn from shows that she trusted him and his. Pearson took an interest in her at the joint fire training and continued to communicate with her afterward. M.M. clearly admired Pearson and wanted to learn from him. Pearson fed this admiration by communicating with a minor about various topics and driving her alone in the Belvedere Fire Company pick-up truck to secluded areas. This belies Pearson's narrow definition of "mentor".

Pearson avers that Pearson had no authority over M.M. at the joint fire training session. This does not comport with a reasonable view of the facts and circumstances. This was a joint training between Belvedere and Mill Creek. Leadership from both departments, Pearson and Garone, were present. There was a mixing between the departments because Pearson invited M.M. to go into a burning building with him during the training. A48. He was a 39-year-old Deputy Chief and M.M. was a 15-year-old junior firefighter. B1 at 24:48. Pearson's assertion that he would not have been responsible for M.M., when he invited her to go into a training fire with him defies reason.

Alternatively, there was sufficient evidence presented at trial to establish that Pearson was "an invitee or designee of a person who stands in a position of trust,

authority or supervision over the child," under 11 *Del. C.* § 778 and 778A. Specifically, section 778 provides that:

> A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:
>
> (1) Intentionally engages in sexual intercourse with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.
>
> (2) Intentionally engages in sexual penetration with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.[23]

Similarly, section 778A provides:

> (a) A person is guilty of sexual abuse of a child by a person in a position of trust, authority, or supervision in the second degree when the person:
>
> (1) Intentionally has sexual contact with a child who has not yet reached that child's sixteenth birthday or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority, or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority, or supervision over the child.[24]

At trial, evidence showed that Pearson was in an authority role as a Deputy Chief alongside Garone at the West Chester training. A45-46. Pearson was also in

[23] 11 *Del. C.* § 778(1)-(2).

[24] 11 *Del. C.* § 778A(1).

his Deputy Chief role when Belvedere covered Mill Creek's responsibilities and M.M. was the only Mill Creek member present. A56-58. Pearson told police that Belvedere works with Mill Creek every day and had more calls with them than any other company. B1 at 5:30. Pearson twice picked up M.M. from Mill Creek while she was on duty in an official Belvedere vehicle. A71, 87. Pearson's supervision of M.M. was concurrent with that of Garone at the joint training and in place of Mill Creek officials with their consent during Belvedere's coverage. Between the frequent contact between Belvedere and Mill Creek and the unbalanced power dynamic between Deputy Chief Pearson and junior firefighter M.M., it is understandable that Pearson would be viewed by M.M. as a designee of her own department's authority. The evidence thus also establishes that Pearson was "an invitee or designee of a person who stands in a position of trust, authority or supervision over the child," sufficient to establish SACPPT under 11 *Del. C.* § 778(1) and (2) and 778A(1).

Pearson's contention that the State is precluded from arguing the applicability of section 761(e)(2) because it did not specifically mention that grouping in its written response to Pearson's motion for judgment of acquittal is without merit. The State did not waive this argument. The State referenced 11 *Del. C.* §761(e)(2) when it discussed whether Pearson was a mentor during the oral motion for judgment of acquittal. A137. The State also noted in its written response that "the victim initially

admired the defendant and his authority and she had hopes of him becoming her mentor *or* someone who could possibly further her career as a firefighter. A177. This language implicates subsection (e)(2).

Pearson also argues that because the trial court made no specific finding regarding section 761(e)(2) in its written decision on the motion for judgment of acquittal, his sex abuse convictions must be vacated if based on a finding that he was in a position of trust, authority or supervision under section 761(e)(2). Although the Superior Court did not specifically reference section 761(e)(2), this Court may affirm the Superior Court's ruling on alternative grounds different from those articulated by the Superior Court.[25]

B. The State Presented Sufficient Evidence that Pearson was a Person Who Stood in a Position of Trust, Authority or Supervision over M.M. under 11 *Del. C.* § 761(e)(7).

Pearson argues that the State failed to establish that Pearson was a "person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children."[26] Pearson avers that the State presented no evidence that "because of his volunteer service [Pearson]

[25] *See Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361, 1390 (Del. 1995).

[26] 11 *Del. C.* section 761(e)(7).

'ha[d] regular direct contact' with M.M. and 'assume[d] responsibility, whether temporarily or permanently, for [her] care or supervision[.]'"[27] Pearson's arguments are unavailing.

The State presented sufficient evidence for a rational fact-finder, viewing the evidence in the light most favorable to the State, to find beyond a reasonable doubt that Pearson stood in a "position of trust, authority or supervision" over M.M. under section 761(e)(7). Pearson assumed responsibility for M.M. due to his profession, vocation, avocation, and volunteer service. Pearson took responsibility for M.M.'s guidance and safety when he offered to have her go into a burning building with him at the joint fire training. A45-51. He again assumed responsibility for her as the Deputy Chief when Belvedere covered Mill Creek's station and M.M. was the only Mill Creek member present. A56-58. Pearson used this meeting to obtain M.M.'s Snapchat information and began to have regular, direct contact with her. A65; A68. Using this contact, Pearson assumed responsibility for M.M on two subsequent occasions when he picked her up in his Belvedere vehicle while she volunteered for Mill Creek. A73-83; A87-104. Here, the State presented evidence that Pearson was a volunteer firefighter and Deputy Chief at Belvedere. The Belvedere and Mill Creek fire companies encountered one another regularly. As Pearson told police in

[27] Op. Br. at 19.

his recorded interview that was played at trial, he worked with Mill Creek "every day" and had more calls with them than any other company. B1 at 5:30.

Pearson argues that there were only two instances where Pearson and M.M. were volunteering as firefighters- July 16 and July 30, 2022.[28] Pearson contends that there was no evidence that Pearson assumed responsibility for M.M.'s care or supervision on either occasion. Not so; viewing the evidence in the light most favorable to the State, the evidence was sufficient for any rational juror to find that Pearson, because of his profession, vocation, avocation, or volunteer service had regular direct contact with M.M. and assumed responsibility for her. The State presented evidence that Pearson asked M.M. to go through a fire training scenario with him. He was an adult and a senior member of his department on a joint training. M.M. was 15 years old and a junior firefighter. The State also presented evidence that Pearson, the Deputy Chief, was present when Belvedere covered the Mill Creek station while M.M. was the only Mill Creek member present and while she went on 2-3 runs. A56. Pearson was responsible for M.M. in his supervisory role and while she was in potentially dangerous situations

Pearson also contends that he cannot be in a position of trust, authority or supervision on August 18 and 24, 2022 when he took M.M. in a Belvedere Fire Company truck to locations where he sexually abused her. Pearson again focuses

[28] Op. Br. at 20.

on a narrow portion of subsection (e)(7) and the definition of "voluntary services" rather than the broader statutory construction or the inclusion of profession, employment, vocation, and avocation in the subsection. Pearson and M.M. met through the volunteer fire service. They attended training together where Pearson had responsibility for junior firefighters. Pearson and Belvedere covered Mill Creek's area, giving Pearson access to groom M.M. at her fire station. This led to communication on Snapchat between Pearson and M.M. Finally, while M.M. was actively volunteering at Mill Creek, Pearson picked her up in a Belvedere Fire Company vehicle and drove her to another location on two occasions. He was a 39-year-old Belvedere Deputy Chief picking up a 15-year-old junior firefighter who he knew admired him. Any rational fact-finder could determine, in a light most favorable to the State, that Pearson was in a position of trust, authority or supervision over M.M. when they met through the fire service, he had previously been responsible for her care at the joint fire training and during Belvedere's coverage at Mill Creek, M.M. was actively volunteering as a junior firefighter on both occasions, he picked her up in an official Belvedere vehicle, and he was the only adult present with her when he removed her to another location of his choosing Pearson's relationship with M.M. was formed by, enhanced by, and inextricably intertwined with their fire service.

Pearson contends that since firefighter/junior firefighter is not explicitly mentioned in the section 761(e) classifications, the relationship was not intended to be a position of trust, authority or supervision. This argument is unavailing. First, trial counsel conceded that a firefighter could be in a position of trust, authority or supervision when he told the trial court, "Your Honor, we are not challenging that a firefighter could be under the statute, because he could be." A140. As previously discussed, the preliminary modifying language in section 761(e) before the classes of persons shows that the list is intended to be nonexclusive. The Superior Court found that, "The facts on the record indicate that Mr. Pearson, while working in his capacity as a Deputy Chief of the Belvedere Fire Company, is included in the nonexclusive list enumerated in 11 Del. C. § 761(e)(7) as a 'person in a position of trust ... because of [his] profession, employment ... or volunteer service [and had] regular direct contact with the child ... in the course of [his] assumed responsibility, whether temporarily or permanently.'"[29] The court further held that, "even if Mr. Pearson was not explicitly included in the list, the statutory construction principal of ejusdem generis designates that a list of examples given can create an assumed prohibition of activity of other similar nature."[30]

[29] *Pearson,* at *3.
[30] *Id.*

Pearson avers that the trial court failed to find that Pearson assumed responsibility for the care or supervision of M.M. in its denial of the motion for judgment of acquittal because it abridged the definition of "position of trust, authority or supervision" in two places, leaving off the words, "for the care of supervision of a child or children."[31] Pearson concedes that the trial court provided the entire definition initially.[32] However, Pearson argues that the abridged definition in two later quotes means that the court did not find that he assumed responsibility for M.M.'s care or supervision. He is incorrect. Pearson parses the trial court's quotes of the definition to create a narrow distinction that does not exist. The trial court specifically held that the facts in the record showed that Pearson "maintained a degree of responsibility over M.M. in his official capacity as Deputy Chief of Belvedere Fire Company," explaining:

> As proscribed by 11 Del. C. § 778 and defined under 11 Del. C. § 761(7), a person is "[i]n a position of trust, ... 'because of that person's profession, employment, vocation, avocation, or volunteer service [and] has regular direct contact with the child or children and in the course there of assumes responsibility, whether temporarily or permanently, *for the care of supervision of a child or children.*' " The witnesses' testimony at trial confirms the jury's verdict that Mr. Pearson was a person in a position of trust. The following facts were educed from the testimony and evidence at trial that support Mr. Pearson was "in a position of trust ... because of [his] employment/volunteer [and had] regular direct contact with the child ... in the course of [his] assumed responsibility, whether temporarily or permanently." (1) Mr. Pearson was a Deputy Fire Chief of the

[31] Op. Br. at 22-23.
[32] Op. Br. at 22.

> Belvedere Fire Company when he met M.M. at a joint training with Mill Creek Fire Company, where M.M. volunteered as a junior fire fighter; (2) M.M. admired Mr. Pearson and had aspirations for him to become her mentor or help her with her career in firefighting; (3) M.M. met Mr. Pearson a second time in his official capacity as Deputy Fire Chief when he volunteered at Mill Creek Fire Company where M.M. was stationed; (4) while acting in his official Capacity as Deputy Fire Chief, Mr. Pearson engaged in inappropriate communications with the M.M. while she was a volunteer; (5) Mr. Pearson and M.M. exchanged social media profile information while he worked in his capacity at Belvedere Fire Company; (6) Mr. Pearson engaged in ongoing communications with M.M. through Snapchat; (7) Mr. Pearson's continued communications with M.M. through Snapchat resulted in Mr. Pearson meeting M.M. in a Dunkin Donuts parking lot next to Mill Creek Fire Company when she was actively volunteering; (8) M.M. testified and surveillance footage confirms that she went for a ride in Mr. Pearson's Belvedere fire company vehicle when she was actively volunteering with Mill Creek Fire Company; (9) M.M. testified Mr. Pearson met her a second time, as M.M. was actively volunteering, and drove M.M. to a nearby secluded parking lot on Mill Creek Fire Company property.

The facts on the record support that Mr. Pearson met with M.M. while actively working in the capacity as a Deputy Chief of Belvedere Fire Company and holding himself out to the public and M.M. that he maintained a degree of responsibility over M.M. in his official capacity as Deputy Chief of Belvedere Fire Company. The facts on the record indicate that Mr. Pearson, while working in his capacity as a Deputy Chief of the Belvedere Fire Company, is included in the nonexclusive list enumerated in 11 Del. C. § 761(e)(7) as a "person in a position of trust ... because of [his] profession, employment ... or volunteer service [and had] regular direct contact with the child ... in the course of [his] assumed responsibility, whether temporarily

or permanently." Thus, the challenged list in 11 Del. C. § 761(e) is inclusive of the behavior that defines a "person in a position of trust."[33] Finally, Pearson argues that the State failed to cite to section 761(e)(7) in its written response to the motion for judgment of acquittal. This argument is like the argument Pearson made about the State's failure to cite to section 761(e)(2). For the same reasons, Pearson's argument is unavailing.

C. There Was Sufficient Evidence Presented to Show that Pearson was in a Position of Trust, Authority or Supervision over M.M. Pursuant to 11 *Del. C.* § 761(e).

Pearson argues that there was no evidence presented sufficient to find whether an "unlisted" relationship existed.[34] He again refers to "the catch all phrase" in section 761(e). As previously discussed, Pearson misapprehends the statutory construction. There is no catch all exception. A person in "a position of trust, authority or supervision over a child" "includes, but is not limited to" the categories in section 761(e)(1-7). The jury was required to find that Pearson was in a position of trust, authority or supervision, not that he fit into one of the roles categorized in section 761(e)(1-7). Here, the State presented sufficient evidence for a rational fact-finder, viewing the evidence in the light most favorable to the State, to find beyond a reasonable doubt that Pearson stood in a "position of trust, authority or

[33] *Pearson*, at *3 (emphasis added).
[34] Op. Br. at 24.

supervision" over M.M. Pearson was an experienced firefighter in a supervisory role at Belvedere. B1 at 3:30. M.M. had been a firefighter for only months. A29; He took responsibility for her at the joint training and again when he and Belvedere covered the Mill Creek station. A48; A56-58 He added her on Snapchat and used that to communicate with her. A65-68. As an adult who engaged with a minor and asked her to meet him, he was in a position of supervision over M.M., especially when he removed her from Mill Creek without any parental knowledge or the knowledge of anyone at Mill Creek acting *in loco parentis.* A69-70; A87-89. There was ample evidence that Pearson was in a position of trust, authority or supervision over M.M.

II. 11 *DEL. C.* § 761(E) IS NOT UNCONSTITUTIONALLY VAGUE AND DID NOT VIOLATE PEARSON'S DUE PROCESS RIGHTS BECAUSE IT PROVIDED FAIR NOTICE OF THE PROHIBITED ACTIVITIES TO A PERSON OF ORDINARY INTELLIGENCE.

Question Presented

Whether a person of ordinary intelligence would understand that Pearson stood in a "position of trust, authority or supervision over [M.M.]," when viewed in the light most favorable to the State, for any rational trier of fact to have found Pearson guilty of SACPPT beyond a reasonable doubt.

Standard and Scope of Review

This Court reviews challenges to a statute's constitutionality *de novo.*[35]

Merits of Argument

Pearson argues that the definition of a person in a position of trust, authority or supervision of a child in 11 *Del. C.* § 761(e), as applied to sections 778 and 778A, is unconstitutionally vague because it failed to provide him with proper notice of the prohibited conduct.[36] He specifically objects to the "includes, but is not limited to" language that precedes the list of examples of persons who are in a position of trust, authority or supervision. Pearson's argument is unavailing.

[35] *Starling v. State*, 882 A.2d 747, 756 (Del. 2005).
[36] Op. Br. at 26.

Pearson made a similar argument to the trial court in his oral and written motion of judgment of acquittal.[37] The trial court rejected Pearson's argument, finding that the plain language of the statute via the "nonexclusive list" gave him notice of what types of persons were considered to be in a position of trust, authority or supervision.[38] The trial court held that "even if Mr. Pearson was not explicitly included in the list, the statutory construction principal of *ejusdem generis* designates that a list of examples given can create an assumed prohibition of activity of other similar nature."[39] The trial court further noted that the *mens rea* of 11 *Del. C.* § 778 mitigated any possible unconstitutional vagueness because "it does not relieve the statute of the objection that it punishes without warning an offense of which the accused was [aware]."[40] The Superior Court's decision was correct.

Statutes are presumed to be constitutional.[41] This Court reads "statutory language so as to avoid constitutional questionability and patent absurdity and to give language its reasonable and suitable meaning."[42] In addition, "[a]ll reasonable doubts as to the validity of a law must be resolved in favor of the constitutionality

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[37] Pearson made no pre-trial objection to the indictment and did not request a bill of particulars.
[38] *Pearson*, at *3.
[39] *Id.* (citing 73 Am. Jur. Ed *Statutes* § 135 (2001) (citations omitted); *State v. Wien*, 2004 WL 2830892, at *1 (Del. Super. Ct. May 19, 2004)).
[40] *Id.* at *3 (citations omitted).
[41] *Hoover v. State*, 958 A.2d 816, 821 (Del. 2008)
[42] *Id.* (citations omitted).

of the legislation."[43] When determining whether a statute is unconstitutionally vague, this Court first determines whether "the terms of the statute are sufficiently explicit to inform those subject to the statute of the prohibited conduct."[44] Second, the Court determines "whether the terms of the statute are so vague that persons of common intelligence must guess at the statute's meaning and would differ as to its application."[45] Here, Pearson has failed to establish that section 761(e) is unconstitutional. Pearson's argument focuses on the "includes, but is not limited to" language in section 761(e). The use of "includes, but is not limited to" does not render a statute void for vagueness.[46] He argues that the jury was "unrestrained" and could consider an undefined class of persons. Not so. The class of persons the jury was constrained to consider was persons in a position of trust, authority or supervision. To aid the jury, the statute provides, and the trial court instructed them on the two most relevant group examples. The jury was not determining a class. It was determining whether under the facts and circumstances of this case, Pearson was a person in a position of trust, authority or supervision over M.M. Pearson's suggestion that the statute "provides no guidance" in determining what non-listed

[43] *Id.* (citations omitted).
[44] *Id.* at 820-821.
[45] *Id.* at 821.
[46] *National Shooting Sports Foundation, Inc. v. James*, 604 F. Supp. 3d 48, 69 (N.D.N.Y. 2022); *U.S. v. Grande*, 353 F. Supp. 2d 623, 635 (E.D. Va. 2005) ("as demonstrated by, but not limited to" is not unconstitutionally vague language).

persons are in a position of trust, authority or supervision or that there were no "minimal guidelines" is not supported by the record. The two example sections presented in the jury instructions acted as guidelines of the most relevant categories of persons who might be in a position of trust, authority or supervision. Pearson seems to argue for a statute where all possible classes of people who could possibly be in a position of trust, authority or supervision must be listed. Such an unreasonable suggestion would result in a vastly longer and everchanging statute where all manner of previously unconsidered relationships that result in a position of trust, authority or supervision must be added piecemeal as they occur. Such an idea is simply unworkable and unreasonable.Here, Pearson was a Deputy Chief at Belvedere, a company that worked with Mill Creek more than any other. M.M. was a minor and a junior firefighter at Mill Creek. Pearson was aware that M.M. was underage. A150. Pearson was in a position of responsibility at a joint training where M.M. participated. Pearson was also in a position of responsibility when Belvedere covered Mill Creek's responsibility and M.M. was the only Mill Creek member at the station. In both cases, despite his knowledge of M.M.'s status and age, Pearson engaged in inappropriate conduct and communication with M.M. Pearson engaged with M.M. on Snapchat. Pearson admitted his concern about being seen together.[47] This led him to eventually pick her up while she volunteered at Mill Creek, but not

[47] B1 at 11:40; 12:20; 21:10; 37:00.

at the fire station itself. M.M. would walk offsite, and Pearson would take her to secluded locations where he engaged in sexual conduct with her. Each time, he picked her up while she was working at Mill Creek in a marked Belvedere pick-up truck. In each case, he returned M.M. to a location near Mill Creek where she resumed her work as a junior firefighter. Pearson's argument that he did not understand or was not aware that he was a person in a position of trust, authority or supervision over M.M. is inconsistent with the facts and with Pearson's own attempts to hide his contact with M.M. Pearson or any other person of ordinary intelligence was on fair notice of the prohibited conduct.

CONCLUSION

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

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Dated: December 12, 2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DWAYNE L. PEARSON	)	
	)	
Defendant Below-Appellant,	)	
	)	
v.	)	No. 268, 2024
	)	
STATE OF DELAWARE,	)	On appeal from the
	)	Superior Court of the
Plaintiff Below-Appellee.	)	State of Delaware
	)	

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION

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DATE: December 12, 2024