EFiled: May 27 2025 02:12PM EDT
Filing ID 76344216
Case Number 12,2024

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DESHAN FREEMAN,	)	
	)	
Defendant—Below,	)	
Appellant	)	
	)	
v.	)	No. 12, 2024
	)	
	)	
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff—Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

Santino Ceccotti, Esquire [#4993]
Office of the Public Defender
Carvel State Building
820 N. French St.
Wilmington, Delaware 19801
(302) 577-5150

Attorney for Appellant

DATE: May 27, 2025

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

I. THE STATE ENGAGED IN PROSECUTORIAL MISCONDUCT WHEN IT WILLFULLY VIOLATED THE RULES OF DISCOVERY IN A MANNER THAT VIOLATED FREEMAN'S SUBSTANTIAL RIGHT TO DUE PROCESS.

The State in its Answering Brief serves a plate full of icing and a few crumbs of cake. As one example, the State tries to trivialize the discovery violations comprised of the April 3 (tablet communications) and April 7 (phone calls) arguing that these disclosures were "hardly voluminous". Ans. Br. at 14. The State, like the Superior Court below, fails to recognize that Freeman takes issue with the quality, not the quantity, of the evidence disclosure. The materiality of the communications between Freeman and Bethea simply cannot be overstated. The messages were both material to the preparation of the defense and intended for use by the State as evidence in chief at the trial. In fact, the State does not dispute that "Bethea was a critical witness" and the relevancy of the tablet messages to its case. Ans. Br. at 15. Instead, the State wants to be commended for dumping thousands of pages of discovery on the day it offered Freeman a plea, a significant amount of which was subsequently excluded and had little to no value.

The State contends "[t]hat there was additional discovery provided after Freeman's rejection of the plea is of no moment." Ans. Br. at 17. This can not be further from the truth. Timing was everything in determining the extent of

Freeman's Due Process violation. Take for instance the following timeline of events in what was a three-year old case.

- Beginning in March of 2023, the State begins unloading new discovery on Defense counsel. Trial less than one month away.
- On March 10, 2023, the State sent supplemental discovery. This included the extraction of Bethea's cellphone which is 55,818 pages.
- On March 17, 2023, the State again sent supplemental discovery. This included 120 DOC Calls; 10 DOC Video Visits; 54 pages of DOC Tablet messages; and 38 Images. A179.
- State extended a plea offer to Freeman on the same day for the first time in this 3-year-old case. The offer expired on March 27, 2023. A34.
- On March 21, 2023, the State again sent supplemental discovery. This included Defendant's prior certified convictions; the 911 calls; the 911 call transcript; and a transcript from a video sent on March 10, 2023.
- On April 3, 2023, State finally provided the 14-month-old tablet messages. A160.
- Defense counsel filed a motion to exclude Bethea's cellphone on April 5, 2025.
- Jury selection commences on April 6, 2025.
- On April 7, 2023, State provides defense counsel two prison calls from January 4, 2022 and January 18, 2022. A154.
- Defense counsel filed a motion to dismiss for prosecutorial misconduct on April 7, 2025.

This was an exorbitant amount of discovery in a very compressed time period leading up to and after the start of trial. Making matters worse was that the State saved its best for last. The State had the text messages in its possession for 14 months and it had the phone calls in its possession without disclosing their existence when it denied Freeman's reasonable request for a one-week extension to consider his plea offer. Freeman was denied a fair opportunity to consider the plea offer with his attorneys and with all material discovery in their possession. At the end of the day, the State stripped Freeman of any possibility of making an informed decision about his life and liberty.

As Freeman's Opening Brief pointed out, the State's duty is not to simply convict the guilty, it is to ensure the defendant receives a fair process.[1] Freeman was not afforded that. The discovery process in criminal proceedings allows the defendant a fair "opportunity to prepare in advance of trial and avoid surprise, thus extending to him fundamental fairness which the adversary system aims to provide."[2] "Where the state has failed to respond promptly and fully to the defendant's disclosure request, the question is whether the failure has resulted in fundamental unfairness or prejudice to the defendant."[3] Compliance with the rules

---

[1] *State v. Mayhorn*, 720 N.W.2d 776, 791 (Minn.2006).
[2] *State ex rel. Jackson Cnty. Prosecuting Att'y v. Prokes*, 363 S.W.3d 71, 76 (Mo. Ct. App. 2011) (quoting *State v. Scott*, 647 S.W.2d 601, 606 (Mo.App. W.D.1983)).
[3] *Prokes*, 363 S.W.3d at 76.

of discovery "foster[s] informed pleas, expedited trials, a minimum of surprise, and the opportunity for effective cross-examination," and the State's failure to comply with the applicable discovery rules "serve[s] only to thwart these goals."[4] Here, the State used discovery as a tool to "gain some tactical advantage" over Freeman.[5]

One of the State's next arguments is perhaps the most dubious of all. The State contends that "there is no record support for the idea that having the opportunity to review the tablet messages and prison phone calls would have changed Freeman's decision" on the plea negotiations. Ans. Br. at 17. Contrary to what it might think, the State is not clairvoyant enough to make such a bold and erroneous claim. The communications between Freeman and Bethea, the only surviving witness, were highly material and central to this case. The State chose not to mention these calls to the defense nor had provided the messages while Freeman's plea offer was open. As Freeman's Opening Brief explained, access to all of the prison communications that were eventually used at trial would simultaneously be material to preparation of Freeman's defense and critical to his consideration of the plea offer. It is utter conjecture to assert that it would not have impacted his plea negotiations and or decisions.

---

[4] *Id (quoting State v. Wells,* 639 S.W.2d 563, 566 (Mo. banc 1982)).
[5] *United States v. Marion*, 404 U.S. 307, 325 (1971).

The State follows up the aforementioned to argue that "[t]here is nothing in the record to suggest that Freeman, after having the opportunity to review the evidence, attempted to reengage the State in plea negotiations." Ans. Br. at 17. It is astounding that the State has the audacity to make such a claim when it is fully aware that it was unwilling to extend the plea offer and keep it open just one additional week, without disturbing the jury selection or the trial date, when defense counsel made the request on March 27, 2023 at final case review. A35-36. Nothing in the record explains the State's denial.

Is the State now suggesting that, despite its rejection of Freeman's plea continuance when he had not yet had an opportunity to discuss it with his family, the burden was on him to ask again and there would be a different outcome? "The definition of insanity is doing the same thing over and over and expecting different results."[6] Its lunacy to think that another request for plea negotiations would not have resulted in rejection just like the initial request. The State offers nothing to have Freeman or the Court to believe otherwise.

Contrary to the State's contention, Freeman meets all three prongs of the *Hughes*[7] analysis to establish prosecutorial misconduct. Ans. Br. at 18. Freeman's Opening Brief pointed out in great detail how the State committed a discovery

[6] Most often attributed to Albert Einstein.
[7] *Hughes v. State,* 437 A.2d 559, 571 (Del. 1981).

violation. Op. Br. at 16-19. It is puzzling how the State can claim that "[t]he tablet messages and prison phone calls were not central to the case." Ans. Br. at 19. The discovery violations were central to this case. The communications are between Freeman and Bethea, the only surviving witness. As the trial judge noted, Bethea was a key witness and her testimony was central. Thus, any effort by the State to attack the credibility of her affidavit and subsequent testimony that Freeman was not the shooter or that she could no longer be sure he was the shooter was pivotal.

The State admits that this was a close case. Ans. Br. at 19. Here the State presented a case with many problems. There was no DNA evidence, no fingerprint evidence, no confession, no firearm, and no cell site location data.

Moreover, the State took no steps to mitigate the error. Instead, as the court noted, in part, the State "dump[ed] tens of thousands of pages of a cell phone approximately three weeks prior to trial" along with additional prison communications, medical records and other discovery. Yet, it held back the actual prison communications it intended to use until April 3rd (tablet communications) and April 7th, after jury selection, (phone calls). It is absurd for the State to argue that since "Freeman did not request additional time to review the evidence demonstrates his substantial rights were not prejudiced by the State's disclosure of the evidence." Ans. Br. 21. Any additional time, if granted, would have been futile because it was after the horse had bolted. By this time, the trial had commenced and

the State's plea offer was off the table. Thus, all three prongs of the *Hughes* are established.

II. THE STATE VIOLATED FREEMAN'S FOURTH AMENDMENT RIGHT TO BE FREE FROM ILLEGAL SEARCHES AND SEIZURES WHEN IT OBTAINED FREEMAN'S PRISON COMMUNICATIONS WITH BETHEA THROUGH THE USE OF AN UNREASONABLE ATTORNEY GENERAL'S SUBPOENA.

Freeman relies on the arguments presented in his Opening Brief.

III. IN THIS CREDIBILITY CASE, THE PROSECUTOR'S ELICITATION OF AND KNOWING RELIANCE ON FALSE TESTIMONY WAS IMPROPER AND JEOPARDIZED THE FAIRNESS AND INTEGRITY OF FREEMAN'S TRIAL.

On February 25, 2025, in *Glossip v. Oklahoma*,[8] the United States Supreme Court, repeated the *Napue*[9] principle that, a conviction obtained through the knowing use of false evidence violates the Fourteenth Amendment's Due Process Clause.[10] In *Glossip*, the defendant was convicted of capital murder based almost entirely on the testimony of the individual whom he contracted to commit the act.[11] About 20 years after the conviction, the State produced several boxes of evidence that had never been disclosed. The record demonstrated conclusively that the State had allowed false testimony by the cooperator to stand uncorrected.[12] The Oklahoma Court of Criminal Appeals ("OCCA") found the claim procedurally barred under state statute and also held that there was no *Napue* violation because defense knew or should have known that the testimony was false.[13]

The High Court reversed the OCCA and held that the prosecution had indeed committed constitutional error because the Due Process Clause imposes a duty to

---

[8] 145 S. Ct. 612 (2025).
[9] *Napue v. Illinois*, 360 U.S. 264 (1959).
[10] *Glossip,* 145 S. Ct. at 617.
[11] *Id.* at 614.
[12] *Id.*
[13] *Id.* at 624.

correct false testimony on the state, not the defense.[14] Also, the defendant did not need to show that false testimony directly affected trial's outcome. It is enough to show that the state's failure to correct the false testimony may have contributed to the verdict.[15]

Here, the State properly confesses that "Bethea's testimony regarding her contact with Freeman prior to his arrest was demonstrably incorrect" and that "the prosecutor knew Bethea's testimony was incorrect." Ans. Br. at 38. If this wasn't prejudicial enough, the prosecutor consciously decided to double down during its closing argument, and stated in part, "Deona Bethea from the stand said she didn't hear from Freeman until he got arrested, but after he got arrested, they started talking.... Wherever he is, according to Deona Bethea, he's not calling her. He's having no contact with her until he gets arrested." A350. Rather than correct the false testimony, the prosecutor went on to exploit this incorrect testimony to support the argument that police were unable to find Freeman before he was arrested and then when he was arrested and no longer able to evade police, he began to contact her to pressure her to explain why her version of events changed and why she was not identifying Freeman as the shooter. B253-258.

[14] *Id.* at 629.
[15] *Id.* at 627.

Like the Superior Court below, the State somehow posits that the prosecutor is absolved of any wrongdoing and the error is not material because "the trial judge suppressed the contents of Freeman's phone, which prohibited the prosecutor from confronting Bethea with the messages[.]" Ans. Br. at 39. The absurdity of this argument cannot be overstated. As pointed out in Freeman's Opening Brief, the relevant error is not whether the prosecutor violated the court's order to exclude the texts, it is whether he engaged prosecutorial misconduct by eliciting testimony he knew to be false and knowingly relied on that testimony to make an argument. Op. Br. at 33.

A conviction knowingly "obtained through use of false evidence" violates the Fourteenth Amendment's Due Process Clause.[16] Here, the prosecutor knowingly relied on false testimony when he told the jury that Freeman never contacted Bethea until he was incarcerated. Since the State violated its constitutional obligation to correct false testimony, this amounted to reversible error.[17]

Contrary to the State's position, the record reflects that the evidence that the prosecutor allowed to go uncorrected was material. Evidence can be material even if it "goes only to the credibility of the witness,"; indeed, "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or

---

[16] *Glossip,* 145 S. Ct. at 626 (citing *Napue*, 360 U.S. at 269).
[17] *Id*.

innocence[.]"[18] Even the State acknowledges that "this was a fairly close case" and the evidence was far from overwhelming. Ans. Br. at 19. The issue of identity was critical in this case. Bethea was the only witness with respect to identification. She initially identified Freeman as the shooter. However, she swore out an affidavit to the contrary. Her affidavit was consistent with her March 2023 statement and with her testimony that she was not sure that Freeman was the shooter. The State responded with a theory that Freeman pressured Bethea to recant her identification of him as the shooter. Despite knowing there was contact between Bethea and Freeman from even before his arrest, the State knowingly relied on her false testimony to the contrary to imply Freeman made sudden contact later in order to get the affidavit. Whether the jury believed the State's theory that Freeman pressured her was central.

Had the prosecutor corrected Bethea on the stand and not further exploited the knowingly false testimony in closing, the State's case would have suffered. There is a reasonable likelihood that correcting Bethea's testimony would have affected the judgment of the jury. "[T]he relevant inquiry under *Napue* is whether the content of the false testimony at issue is material. As *Napue* made clear, however, "'[a] lie is a lie, no matter what its subject.'"[19] "Here, the prosecutor's failure to correct

---

[18] *Id.*

[19] *Glossip,* 145 S. Ct. at 630-631 (quoting *People v. Savvides*, 136 N.E.2d 853, 854-855 (N.Y. 1956)).

[Bethea's] false testimony is the relevant error, so [this] Court [should] ask[] whether a correction could have made a material difference. The answer is clearly yes."[20] Accordingly, the State's misconduct constitutes plain and reversible error.

[20] *Id.* at 631.

CONCLUSION

For the reasons and upon the authorities cited herein, the undersigned counsel respectfully submits that Deshan Freeman's convictions and sentences must be reversed.

Respectfully submitted,

/s/ Santino Ceccotti
Santino Ceccotti [#4993]
Office of Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

DATED: May 27, 2025