



IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD BOULDEN,)
)
Defendant Below-)
Appellant)
)
v.) No. 309, 2025
)
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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NATURE AND STAGE OF THE PROCEEDINGS

On April 10, 2024, Ronald Boulden (“Boulden”) was arrested and later charged by indictment with Possession of a Firearm During the Commission of a Felony, Aggravated Menacing and Terroristic Threatening. Super. Ct. Docket Item (“DI”) 1, 2. (A1, 5-6).

On the day of trial, Monday, June 22, 2025, defense counsel filed a motion *in limine* to “dismiss the case against Mr. Boulden, or in the alternative, to instruct the jury that certain evidence would have been exculpatory pursuant to *Lolly v. State*.¹”¹ (A232). The Superior Court followed the inquiry set forth in *Johnson v. State*,² and denied the motion. (A28-29). Specifically, the Superior Court found:

Here the video is not in the possession of the police. While known to the police that the evidence existed, the Court is not convinced that the police would have been able to actually collect the video, given the other concerns . . . , such as whether the neighbor would have voluntarily turned it over without a subpoena, and whether the Ring subscription even would have enabled the neighbor to do that. The Court is not prepared to make a blanket statement at this time that the police are required to ask for the video under every circumstance as the defense implies. Even if required under *Brady* or Rule 16, the Court finds that the purported failure to collect the evidence was not negligent or in bad faith. The officers recorded the video on their body cam, so the evidence was preserved in that sense. The defendant is, of course, free to make any other argument at trial regarding the video and cross-examine each witness regarding the video.

¹ 611 A.2d 956 (Del. 1992).

² 27 A.3d 541 (Del. 2011).

(A29-30). After the ruling, the Superior Court conducted a colloquy confirming that Boulden wished to reject the State's plea offer. (A30-32).

During trial, the Superior Court denied the State's attempt to admit the firearm recovered from Boulden's home into evidence, finding lack of foundation. (A167). At the close of the State's case, defense counsel made a motion for judgment of acquittal on the PFDCF charge, which the Superior Court granted. (A135-140, 143, 167-72).

Boulden elected not to testify and presented no witnesses. (A174-79). The jury found Boulden guilty as charged of the remaining two counts in the indictment, Terroristic Threatening and Aggravated Menacing. (A221).

Defense counsel requested immediate sentencing. (A222). The State sought a sentence of 90 days at Level V given the nature of the charges, and that Boulden forfeit all firearms and have no contact with the victim or his family. (A222). The State noted that Aggravated Menacing is a Class E violent felony, warranting up to 15 months at Level V under the SENTAC guidelines. (A224). Defense counsel argued that "the State's request is incredibly excessive for what this was The real penalty for Mr. Boulden is that for the rest of his life he is now a convicted felon," and asked for a probationary sentence. (A224). The Superior Court sentenced Boulden to four years at Level V, with credit for two days served, suspended for 18 months of Level III probation, to be suspended after 12 months for

six months at Level II. (A227-28). The Superior Court ordered Boulden to have no contact with the victim, the victim's residence or the victim's family; undergo an anger management course; perform ten hours of community service; and to forfeit his interest in all firearms seized. (A227-28).

Boulden appealed. This is the State's answering brief.

SUMMARY OF ARGUMENT

I. DENIED. The Superior Court did not err in denying Boulden's motion *in limine* to dismiss the charges against him or for a *Deberry/Lolly* instruction. Boulden argues that the police should have collected and preserved original doorbell camera recordings that they captured on their body-worn cameras, and additional recordings that police did not collect because they were irrelevant. Boulden's speculative claims that the alleged missing evidence would have aided his defense are not supported by the record.

STATEMENT OF FACTS

On April 10, 2024, at about 4 p.m., a male 65-year-old resident at 7 Victorian Court, New Castle, Delaware, was changing the tires on his work van in his driveway. (A96-98, 105). There was a history of disagreement between this resident's stepdaughter and the granddaughter of Ronald Boulden, both teenagers. (A99, 105, 113). Boulden's granddaughter lives with him, two doors down at 9 Victorian Court. (A99, 105). The prior day, Boulden's granddaughter was on the resident's lawn, outside the stepdaughter's window, threatening the stepdaughter that she would beat her up. (A99).

While the resident was changing his tire, Boulden's granddaughter arrived at her home. (A99). The resident stood up and "hollered across," asking if he could speak with her. (A100, 102, 113). From the driveway of their neighbor at 8 Victorian Court, he asked Boulden's granddaughter to try to resolve the rift by coming to his house and talking to his stepdaughter like adults, rather than coming on his property and threatening her. (A100, 102). While this happened, Boulden's wife came outside and stood behind her granddaughter. (A100).

As they spoke, Boulden came out of his house and started screaming "Get out," and, with his arm out straight, pointed a revolver at the resident. (A100, 102, 106). The resident responded, "Sir, I'm not on your property," to which Boulden stated, "I don't care. I'm going to kill you." (A100-01, 102, 103). The resident

said, “You’re going to pull a gun on me?”. (A106-07, 112). The resident “remained as calm as possible,” but felt “very threatened,” and backed away until he reached his own garage, where he was able to call 911. (A101, 103, 112, 116, 118).

Corporal Andrew Davis was one of the first New Castle County police officers to arrive at the scene. (A66-67, 70). He made contact with the victim, who recounted the events to him, and appeared to still be shaken up. (A68-69). Because the threat of a weapon was involved, police held the perimeter and waited for a third officer to arrive and devised a game plan to approach Boulden. (A70).

While they waited, the neighbor who lives at 8 Victorian Court, between Boulden and the victim, came outside his home. (A71). Corporal Davis approached the neighbor, who retrieved his cell phone and searched through clips from his doorbell camera, to see if it captured the altercation. (A71). Corporal Davis’s body-worn camera captured this exchange. (A74-75). They viewed the footage to obtain insight into Boulden’s demeanor. (A70). Corporal Davis also reviewed Boulden’s criminal history. (A79).

Once the third officer arrived, they contacted Boulden, and took him into custody. (A79). Corporal Davis transported Boulden to headquarters for processing, and obtained search warrants for Boulden’s home and vehicle, in an attempt to recover the weapon. (A79-80). By about 5:30 p.m., Officer Adams, who works the evening shift, had arrived at the scene. (A84). He remained at the scene to secure

it and prevent loss of evidence. (A79, 85). Officer Adams conducted the search of Boulden's vehicle, and other officers searched the house. (A85). They recovered a Smith & Wesson .357 magnum revolver from the residence. (A91, 125-27).

I. THE SUPERIOR COURT DID NOT ERR IN DENYING BOULDEN'S MOTION IN LIMINE TO DISMISS THE CHARGES OR FOR A *LOLLY/DEBERRY* INSTRUCTION BECAUSE POLICE HAD NO DUTY TO COLLECT AND PRESERVE IMMATERIAL, IRRELEVANT EVIDENCE.

Question Presented

Whether the Superior Court abused its discretion in denying Boulden's motion to dismiss or for a *Lolly*³/*Deberry*⁴ instruction where police had no affirmative duty to collect evidence that Boulden has not established was either material or exculpatory.

Scope and Standards of Review

“Generally, this Court reviews a trial court’s evidentiary rulings for an abuse of discretion.”⁵ “To the extent the trial judge’s decision is based on factual findings, [the Court reviews] whether the trial judge abused his or her discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.”⁶ The Superior Court judge’s denial of a defense motion for a *Lolly/Deberry* instruction is reviewed *de novo*.⁷

³ *Lolly v. State*, 611 A.2d 956 (Del. 1992).

⁴ *Deberry v. State*, 457 A.2d 744 (Del. 1983).

⁵ *Rybicki v. State*, 119 A.3d 663, 672 (Del. 2015).

⁶ *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

⁷ See *Johnson v. State*, 27 A.3d 541, 545-46 (Del. 2011); *Coleman v. State*, 289 A.3d 619, 623-24 (Del. 2023) (applying *de novo* review to the Superior Court’s decision denying a *Lolly/Deberry* instruction).

Argument

Boulden argues the Superior Court erred in denying his motion *in limine* to dismiss the charges against him or for a *Deberry/Lolly* instruction “where the police failed to collect and preserve material doorbell camera video evidence presented to them by a cooperative neighbor at the scene of the alleged crime.” Op. Br. at 2. Boulden’s argument on appeal fails for three main reasons: (1) police preserved the material, relevant evidence from the doorbell camera recording on their body-worn cameras (“BWC”); (2) any additional clips from the doorbell camera were not relevant or material; and (3) Boulden’s speculative claims that the alleged missing evidence would have aided his defense are not supported by the record.

The Superior Court did not err in denying Boulden’s motion *in limine*. In *Johnson v. State*,⁸ this Court summarized the inquiry required under *Deberry* as follows:

In *Deberry*, the question presented was “what relief is appropriate when the State had or should have had the requested evidence, but the evidence does not exist when the defense seeks its production? Answering that inquiry, [this Court] held that such claims must be analyzed according to the following paradigm:

- 1) would the requested material, if extant in the possession of the State at the time of the defense request, have been subject to disclosure under Criminal Rule 16 or *Brady v. Maryland*?
- 2) if so, did the government have a duty to preserve the material?

⁸ 27 A.3d 541 (Del. 2011).

- 3) if there was a duty to preserve, was the duty breached, and what consequences should flow from a breach?

The consequences that should flow from a breach of the duty to gather or preserve evidence are determined in accordance with a separate three-part analysis which considers:

- 1) the degree of negligence or bad faith involved,
- 2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available, and
- 3) the sufficiency of the other evidence produced at trial to sustain the conviction.

Under *Deberry*, “[a] claim that potentially exculpatory evidence was lost or destroyed by the State can only be decided after each element of the above analysis has been considered.”⁹

In *Deberry*, this Court said, “[t]he State must justify the conduct of the police or prosecutor, and the defendant must show how his defense was impaired by loss of the evidence.”¹⁰ In *Lolly*, the Court “extended [its] holding in *Deberry* to ‘claims involving the failure to gather or preserve evidence *ab initio*,’” and “held that the State’s failure to gather or preserve evidence material to the defense entitles the defendant to an inference that, if such evidence were available at trial, it would be exculpatory.”¹¹ The Court recommended this pattern jury instruction where *Lolly* would apply:

In this case the court has determined that the State failed to

⁹ *Johnson*, 27 A.3d at 545-46.

¹⁰ *Deberry*, 457 A.2d at 752.

¹¹ *Coleman v. State*, 289 A.3d at 625.

collect/preserve certain evidence which is material to the defense. The failure of the State to collect/preserve such evidence entitles the defendant to an inference that if such evidence were available at trial it would be exculpatory. This means that, for purposes of deciding this case, you are to assume that the missing evidence, had it been collected/preserved, would not have incriminated the defendant and would have tended to prove the defendant not guilty. The inference does not necessarily establish the defendant's innocence, however. If there is other evidence presented which establishes the fact or resolves the issue to which the missing evidence was material, you must weigh that evidence along with the inference. Nevertheless, despite the inference concerning missing evidence, if you conclude after examining all the evidence that the State has proven beyond a reasonable doubt all elements of the offenses(s) charged, you would be justified in returning a verdict of guilty.¹²

Boulden's arguments fail under the *Lolly/Deberry* analysis.

1. The Material Evidence Was Disclosed; The Immaterial Additional Clips Were Not Required to be Disclosed Under Rule 16 or *Brady*

At issue are the clips from the doorbell camera that were recorded on the police BWC, as well as additional clips Boulden claims should have been collected and preserved. Superior Court Criminal Rule 16 states, in relevant part:

Documents and Tangible Objects. Upon request of the defendant, the state shall permit the defendant to inspect and copy or photograph books, papers, documents, photographs, *tangible objects*, buildings or places, or copies or portions thereof, that are within the possession, custody or control of the state and that are material to the preparation of the defendant's defense or are intended for use by the state as evidence in chief at the trial, or were obtained from or belong to the defendant.”¹³

¹² *Lolly*, 611 A.2d at 962, n.6.

¹³ Super. Ct. Crim. R. 16(1)(E) (emphasis added). Boulden's citation to the rule omits “tangible” from “tangible objects.” Op. Br. at 17.

In *Coleman v. State*, this Court explained that this subsection of Rule 16 only requires disclosure of tangible physical evidence, and that the *Lolly/Deberry* instruction has only been applied, and was only intended to apply, to physical evidence.¹⁴ The *Coleman* Court also explained *Brady v. Maryland*:¹⁵

Brady is principally concerned with the prosecution's withholding of evidence that is favorable to the accused. A *Brady* violation has three components: "(1) evidence exists that is favorable to the accused, because it is either exculpatory or impeaching; (2) that evidence is suppressed by the state; and (3) its suppression prejudices the defendant." *Brady* claims typically involve the withholding of evidence that is within the government's possession, custody, or control.¹⁶

The doorbell camera footage that was captured on the BWC would have been required to be disclosed because it was inculpatory, and the State planned to use it at trial. Any additional clips were unrelated to the incident; therefore, they were immaterial and, were they in the State's possession, neither Rule 16 nor *Brady* would

¹⁴ *Coleman*, 289 A.3d at 626 ("We have faulted the State for failing to gather or preserve physical evidence material to a defendant's guilt or innocence, like clothing worn during an alleged rape, a crash vehicle in a vehicular homicide case, blood observed near a boobytrapped window, or clothing concealing firearms that were the basis of criminal charges.").

¹⁵ *Brady v. Maryland*, 373 U.S. 83 (1963).

¹⁶ *Coleman*, 289 A.3d at 627 (citations omitted). Boulden's claim appears to be only pursuant to Rule 16 and not *Brady*. See Op. Br. at 16-17 (arguing "the doorbell camera clips . . . would have been discoverable under Superior Court Rule 16" and citing Rule 16(b)(1)(E)) and Op. Br. at 19 (arguing the evidence was material, but not arguing it was exculpatory).

require their disclosure.¹⁷ The Superior Court correctly found that these clips were on a neighbor's cell phone and were not in police possession. (A24, 29).

Boulden was successful in arguing to the Superior Court to suppress the BWC footage of the doorbell camera recording, and now seeks to use the absence of the original doorbell camera recording to establish the materiality required to support his claim under *Lolly/Deberry*. He should not be permitted to have it both ways.

2. The State Satisfied Its Duty to Preserve the Footage on the BWC and Had No Duty to Preserve the Unrelated and Immaterial Additional Clips

In *Coleman*, the Court explained, “[F]or the police to have a duty to collect and preserve specific evidence, the police must have had a reason, at the time, to believe the evidence might be exculpatory. In that regard, . . . ‘the duty to *preserve* exculpatory evidence does *not* include a duty to *seek out* exculpatory evidence.’”¹⁸ The Superior Court correctly held that the “[t]he officers recorded the video on their body cam, so the evidence was preserved in that sense.” (A30). From the BWC, the audio of the doorbell camera is captured, and the victim is heard stating “I’m calling the police . . . You pull a gun on me—I’m calling the police right now.” (A260, at 2:17). The officers’ body-worn camera footage of the scene corroborates the

¹⁷ Whether they were required under Rule 16 or *Brady* is a different inquiry from whether the State would have provided them even without a duty to do so.

¹⁸ *Coleman*, 289 A.3d at 627 (quoting *Powell v. State*, 49 A.3d 1090, 1101 (Del. 2012) (additional citations omitted)).

officers' testimony that the doorbell camera footage did not capture any video evidence; therefore, the audio evidence was all that was available, and the clip was preserved in its entirety.¹⁹ (A22, 71). The BWC video shows that the officers purposely replayed the relevant, material clip so that it would be captured on the officers' BWC. Police satisfied their duty to preserve the audible evidence from the neighbor's doorbell camera.

To the extent Boulden argues he is entitled to relief because the additional clips from the neighbor's doorbell camera phone may have been exculpatory or could have been used to impeach the victim, this argument fails. In *McNair v. State*, cited by the prosecutor (A22), this Court addressed the investigating officers' decision not to obtain surveillance video from a garage, which they had viewed and found of no value.²⁰ An officer testified at a hearing that that the video was not helpful in that they could not identify a perpetrator from the video.²¹ The Superior Court held that the video had no evidentiary value and did not give a *Deberry/Lolly* instruction.²² On appeal, this Court agreed, and also agreed with the Superior Court

¹⁹ The video shows the doorbell camera is situated on the exterior door frame, approximately two feet from the garage, which protrudes from the house approximately six to eight feet and would have obscured the view. (A260, at 1:28)

²⁰ *McNair v. State*, 990 A.2d 398 (Del. 2010).

²¹ *Id.* at 400.

²² *Id.* at 400-01.

“that the mere suggestion that video enhancement techniques were available, without more, is too speculative to warrant a finding that the video could have been given evidentiary value.²³

Other cases involving alleged missing video evidence in the form of MVR footage weigh against Boulden’s claims. In *State v. Wise*, the Superior Court found:

The State was under no obligation to make a video record of the traffic stop and, by the officer’s testimony, did not appear to have made an MVR which would have given rise to a duty to preserve.

...

While an MVR of the incident, if it existed, would have been subject to disclosure, the police had no duty to create an MVR. The officer did not breach any duty by failing to record the interaction simply because he had the tools to make a recording. While it is unclear whether he omitted to record through inadvertence, equipment malfunction, or simply because he viewed the interaction as routine, it is clear that his failure to make the recording was not a breach of any duty.²⁴

The Superior Court reasoned, “[I]t cannot be read to impose a duty to affirmatively create evidence by making an MVR of every citizen interaction that occurs near a patrol car.”²⁵ In *DeLoach v. State*, the MVR evidence presented contained no visual footage and only ambient road noise, and police were unable to explain why.²⁶ The Superior Court held, “First, there is no evidence that the State breached any duty to

²³ *Id.* at 404.

²⁴ *State v. Wise*, 2016 WL7468058, *6 (Del. Super. Ct. Dec. 22, 2028)).

²⁵ *Id.*

²⁶ *DeLoach v. State*, 2012 WL 2948188, *2 (Del. Super. Ct. July 16, 2012).

preserve a video recording of the portable breathalyzer tests when it inadvertently failed to collect such a recording in the first place.”²⁷

Boulden argues the additional clips may have been material. If his rationale prevails, however, there was no reason for Boulden to limit his motion to this neighbor’s doorbell camera evidence as opposed to arguing the police should have collected and preserved any and all doorbell camera evidence from other houses on the street. Here, the Superior Court correctly determined that “[t]he [c]ourt is not prepared to make a blanket statement at this time that the police are required to ask for the video under every circumstance the defense implies.” (A30).

3. Because There Was No Breach of a Duty to Preserve, There Should Be No Consequences.

There was no a breach of the duty to preserve evidence, but if the Court disagrees, Boulden’s claims do not establish a basis for additional relief.²⁸ Boulden has failed to articulate what evidence could have been revealed by either the original of the doorbell camera footage with the incriminating audio clip or additional doorbell camera clips (which did not capture the incident) that would have aided his

²⁷ *Id.* at *4.

²⁸ Boulden was able to have the BWC footage suppressed. (A108-11; In addition, Boulden successfully argued for suppression of the gun, arguing that the revolver found in Boulden’s home was not relevant. (A125-35, 167). The Superior Court also dismissed the PFDCF charge on the basis that the gun was not admitted to evidence. (A135-40, 155-63, 167-73). The State did not cross-appeal these rulings.

defense. Boulden's arguments include:

- (1) “the State’s negligent failure to make any effort to collect and preserve [the doorbell camera video] prejudiced the Defendant,” Op. Br. at 2.
- (2) “contents of the missing video could have been case dispositive.” Op. Br. at 2.
- (3) “the State’s case relied entirely upon the complaining witness’ account to prove the charges in the indictment. The police witnesses did not see the events And no other eyewitnesses testified.” Op. Br. at 18.
- (4) the audio police did preserve “was a fragment of poor quality audio captured by the officer’s body worn camera that was useless in preparing cross-examination or a defense to the complainant’s version of what happened and what was said.” Op. Br. at 18.
- (5) “[t]he doorbell camera evidence . . . could have proven the complainants’ account inaccurate and self-serving,” and allowed him to impeach “the only evidence against Boulden, the complainant’s testimony.” Op. Br. at 19.

Boulden’s arguments are vague and fail to acknowledge important facts: (1) Boulden’s wife was present outside the home during the altercation, witnessed it, witnessed Boulden with the gun, later told police where she thought he obtained the gun, and even called police later to disclose additional firearms located in the home (A100, 102, 247); and (2) the BWC footage capturing the doorbell recording audio is not “useless,” because the victim’s statements to the defendant during the altercation are audible. Had Boulden possessed a reasonable basis to believe the victim was lying about the events or there was any exculpatory value in the doorbell camera footage, he had every incentive to subpoena his wife to testify and ask his neighbor to preserve a copy of the recording and provide it to him or to the police.

4. There Was No Bad Faith or Negligence Involved.

The Superior Court correctly found that “the purported failure to collect the evidence was not negligent or in bad faith.” (A30). The doorbell recording evidence was obtained by police while they waited for additional officers and formulated a plan to approach Boulden. (A70). Officers had a report of Boulden threatening a neighbor with a weapon, and for safety reasons, were seeking additional information to assess the situation. (A67-71). The neighbor who lived between Boulden and the victim came outside for an unrelated reason, and police approached him and asked if video recordings existed from his doorbell camera. *See A71.*²⁹ The neighbor came outside again with his cell phone and searched for relevant clips around the time of the reported incident, ultimately playing two clips for police. They assessed the clips and determined that neither showed the interaction between the victim and Boulden, but one, at 4:03 p.m., more fully described above, captured audio from the altercation, and confirmed Boulden threatened the victim with a gun, and was thus armed. (A247, A260, at 2:17). Officers ultimately made contact with Boulden by phone, and he surrendered. (A247).

²⁹ The full BWC recording captures additional information. The footage was provided to Boulden with the State’s initial discovery request, but is not in evidence.

5. The Alleged Missing Evidence Was Not Important In Light of the Probative Value and Reliability of Secondary or Substitute Evidence that Remained Available.

The secondary evidence to the doorbell camera footage included: (1) the victim's testimony; and (2) the BWC footage of the doorbell camera recordings. The victim's testimony about the incident was the most important independent evidence. Although this fact would make any potential impeachment evidence more valuable, Boulden's trial counsel attacked the victim's credibility on cross-examination, attempting to paint the victim as an untruthful person who created allegations of an oral threat (in addition to being threatened with the firearm) after talking with a friend on the phone.

The value of the BWC footage is that it collected the only material evidence available on the doorbell camera footage—the audio recording. Evidence from the BWC does not support an inference that the original recording would have provided superior audio than what police obtained on the BWC. (A74-75, 107-08).

6. Evidence Introduced at Trial Was Sufficient to Sustain Boulden's Conviction.

Particularly given the nature of the charges, the State's evidence against Boulden was strong. Boulden was arrested and later charged with Aggravated Menacing, Possession of a Firearm During the Commission of a Felony (“PFDCAF”) and Terroristic Threatening. To prove Aggravated Menacing, the State must show that Boulden, “while displaying what appears to be a deadly weapon,” “intentionally

place[d the victim] in fear of imminent physical injury.”³⁰ Possession of a Firearm During the Commission of a Felony requires the State to prove that Boulden knowingly possessed a firearm during the commission of a felony, in this case, Aggravated Menacing.³¹ To prove Terroristic Threatening, the State had to prove that Boulden “threaten[ed] to commit a crime likely to result in death or serious injury to the person or property” of the victim, who is 62 years of age or older.³²

There was ample evidence of these three crimes from the victim’s testimony. The victim testified that Boulden pointed a gun at him and that he was in fear of imminent physical injury, explaining that “when someone pulls a gun on you, assume they’re going to shoot you.” (A112-13). On cross-examination, the victim testified that he had a gun in his face and was “pretty upset after that.” (A115-16). On redirect, the victim testified that Boulden said, “I don’t care. I will kill you.” (A124). Boulden pointing a revolver at the victim at close range, coupled with the victim’s perception of the gun pointed at him and his fear, is sufficient to establish each of these charges beyond a reasonable doubt. That the jury convicted Boulden of Aggravated Menacing with a firearm where the firearm was not introduced into

³⁰ 11 Del. C. § 602(b). “Aggravated menacing is a class E felony.” *Id.* See Indictment. (A5-6).

³¹ See 11 Del. C. § 1447A(a). PFDCF is a class B felony that carries a three-year minimum sentence. *Id.* at § 1447A(a) & (b).

³² 11 Del. C. § 621 (a)(1) and (b). Where the victim is 62 years older or older, Terroristic Threatening is a class G felony. 11 Del. C. § 621(b).

evidence establishes that the jury found the victim credible.

7. Boulden Should Not Benefit from His Delay

Boulden was arrested on April 10, 2024, the date of the incident, and charged by indictment on October 7, 2024. (DI 1, 2; A1). The BWC footage was supplied to Boulden’s counsel January 27, 2025, with the State’s initial discovery response. (DI 11; A2, B1-5). Defense counsel filed its initial discovery request on February 24, 2025. (DI 19; A249-53). Boulden’s May 13, 2025 scheduled trial was continued by the Superior Court due to a lack of judicial officers. (DI 14, 23; A2-3). At the June 18, 2025 pretrial conference, defense counsel said nothing when the Superior Court judge asked, “Are there any other evidentiary issues that you anticipate?” June 19, 2025 Transcript, at 6. (B11). At no point did defense counsel file a motion to compel the doorbell camera recordings.³³ Instead, on the day of trial, Monday, June 23, 2025, defense counsel filed a motion *in limine*, which did not seek to compel disclosure of the evidence, but instead sought to dismiss all charges or to give the jury a *Deberry/Lolly* instruction. (DI 27; A3, 232). As it was filed the day of trial, the prosecutor was not able to respond to the motion in writing, and the Superior Court was tasked with addressing the motion in a pretrial conference before jury

³³ See Superior Court Criminal Rule 16(i)(3). The Superior Court docket does not indicate the court established a due date for pretrial motions, as provided in Superior Court Criminal Rule 12(b) and (c).

instructions, and delayed its ruling until the next day. The late filing of the motion was to the advantage of defendant by avoiding the possibility that the State could fully address the arguments or determine if the doorbell recording was still available and could be produced. Boulden's failure to act earlier or seek this evidence independently does not support his arguments that the evidence might aid his defense. Were the Court to find a discovery violation here, suppression of the body worn camera evidence was a sufficient remedy.

In sum, Boulden's vague allegations that the original doorbell camera clip that was captured on BWC and the additional clips that were not related to the incident might have aided his defense are not credible, because they are not supported by fair inferences from the record. Boulden did not seek to obtain the clips, but rather seeks a windfall dismissal of charges. The Superior Court did dismiss the most material charge, and made several evidentiary rulings in Boulden's favor. Boulden's claim has no merit, but should this Court disagree, any error was harmless given the impact Boulden's claims have already exacted on the claims against him.

CONCLUSION

The judgment of the Superior Court should be affirmed.

/s/ Abby Adams

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DATE: December 17, 2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD BOULDEN ,)	
Defendant Below-)	No. 309, 2025
Appellant,)	
)	On Appeal from the
v.)	Superior Court of the
)	State of Delaware
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 Microsoft Word.

2. This brief complies with the type-volume requirement of Rule 14(d)(i) because it contains 4,507 words, which were counted by Microsoft Word.

DATE: December 17, 2025

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