

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD R. COOCH
RESIDENT JUDGE

**NEW CASTLE COUNTY COURTHOUSE
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**Re: Meredith Hahn v. State of Delaware
I.D. No. 0304003076**

On Defendant's Appeal From a Conviction in the Court of Common Pleas.

AFFIRMED

Submitted: April 5, 2004
Issued: May 10, 2004

Dear Counsel:

Defendant has appealed her October 30, 2003 conviction of Harassment (11 *Del. C.* §1311) in the Court of Common Pleas.

At trial before a jury, the State sought to impeach Defendant's credibility pursuant to D.R.E. 609 with evidence of her 1995 conviction of Falsely Reporting an Incident (11 *Del. C.* §1245). The Court below, after conducting a balancing test, determined that, pursuant to D.R.E. 403, the probative value of Defendant's prior conviction was not "outweighed by prejudice to the jury."¹

The error asserted by Appellant in her appeal is that the Court of Common Pleas "failed to conduct the appropriate D.R.E. 403 balancing test to determine whether the probative value of the Defendant/witness's 1995 conviction of Falsely Reporting an Incident was substantially outweighed by the danger of unfair prejudice before allowing its admission pursuant to D.R.E. 609(a)(1)."² The standard of review is whether the trial court abused its discretion in making the evidentiary ruling in question.

The State, in response, asserts that the Falsely Reporting an Incident connection admitted pursuant to D.R.E. 609(a)(2) was not subject to any balancing test, citing *Johnson v. State*, 2004 WL77863 (January 15, 2004)³ and *Gregory v. State*,

¹ Appendix to Appellant's Op. Brief. at A10.

² Appellant's Op. Brief at 2.

³ *Johnson*, 2004 WL77863 *1 (holding that prior convictions admitted pursuant to D.R.E. 609(a)(2) are not subject to the D.R.E. 403 balancing test).

616 A.2d 1198 (Del. 1992).⁴

Appellant, in her Reply Brief, acknowledges that Delaware case law supports the State's position, but nevertheless asserts that "[w]hile it is true the Delaware Supreme Court has seemed to resolve this issue in the States favor, it was done superficially at best and should be reconsidered."⁵ Appellant further asserts that "[i]n neither of those cases (*Johnson* and *Gregory*) does the Supreme Court do an in-depth analysis to explain its rationale supporting its short order decisions."⁶

Here, appellant concedes (as she must) that Falsely Reporting an Incident is a crime of "dishonesty or false statement." Although the Court below appears to have conducted a "balancing test" with respect to determining the admissibility of the Falsely Reporting an Incident conviction, it was not required to have done so. Other cases from the Supreme Court, as well as from this Court, have held that no balancing test is required by D.R.E. 609(a)(1) when a crime involving "dishonesty or false statement, as set forth in D.R.E. 609(a)(2)," is at issue.⁷ Secondary

⁴ *Gregory*, 616 A.2d at 1203 (holding that under D.R.E. 609(a)(2) "evidence of defendant's felony convictions may be admitted without balancing their prejudicial effect against their probative value only if the prior convictions involved dishonesty or false statement").

⁵ Reply Brief at 1.

⁶ Reply Brief at 1.

⁷ See, e.g., *Tucker v. State*, 1996 Del. LEXIS 329 *5 (Del. Supr.) (holding that "since prior convictions for robbery, burglary and theft clearly have been determined by this Court to be crimes involving dishonest conduct . . . the Superior Court did not err in not undertaking the

authorities are in accord: “Crimes involving ‘dishonesty or false statement,’ regardless of the punishment or against whom used, do not require balancing of probative value against prejudice.”⁸

The Court declines Appellant’s invitation to engage in “in-depth analysis” of this area of the law which is well settled.

The Court of Common Pleas, in conducting an otherwise unrequired balancing test, did not abuse its discretion. The judgment of conviction of Defendant in the Court of Common Pleas is **AFFIRMED**.

IT IS SO ORDERED.

Very truly yours,

RRC/rjd
cc: Prothonotary

D.R.E. 609(a)(1) balancing test.”

⁸ John W. Strong, *McCormick on Evidence* §42 (5th ed. 1999) (footnote citations omitted).