



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSE MORETA, :
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 :
 Defendant Below, :
 Appellant. :
 v. : No. 304, 2018
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 : ON APPEAL FROM
 STATE OF DELAWARE : THE SUPERIOR COURT OF THE
 : STATE OF DELAWARE
 Plaintiff Below, : I.D. NO. 1603013733
 Appellee. :

APPELLANT'S REPLY BRIEF

FILING ID 62714426

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Dated: December 3, 2018

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I. THE TRIAL COURT ABUSED ITS DISCRETION BY ALLOWING THE CO-DEFENDANT’S FACEBOOK POST TO BE ADMITTED UNDER THE CO-CONSPIRATOR HEARSAY EXCEPTION.

A. Argument

The State claims that Mr. Moreta has misapprehended the trial court’s ruling.¹ According to the State, the Superior Court did not admit Gonzalez’s Facebook post under D.R.E. 801(d)(2)(e); the trial court ruled it admissible “because it was not being offered for the truth of the matter asserted.”² But accepting that argument requires this Court to ignore the fact that both the State and trial court relied on *Williams v. State*³ in admitting the co-defendant’s Facebook post.

At the pretrial conference, the State cited *Williams* for the proposition that “bragging is not hearsay.”⁴ The judge agreed to take a look at the case.⁵ After announcing his decision to admit the Facebook post, the judge specifically compared the facts in *Williams* to the facts in this case:

In *Williams v. State*, I think the judge actually found the conspiracy lasting—I’m not sure it’s as relevant as it is in this case, actually. In that case, there was a question of whether the conspiracy was still ongoing. Mr. Gonzalez at this point has absconded from the scene, and this [Facebook post] is just two days later and it’s still part of the whole situation that’s going on in the case. So, the gun’s missing at this point,

¹ State’s Answering Brief (“State’s Answer”) at 8.

² State’s Answer at 10.

³ 494 A.2d 1237 (Del. 1985)

⁴ A-31.

⁵ A-32.

still. And the State has the conspiracy and accomplice liability, and that's where the relevance of this information comes from.⁶

This factual comparison demonstrates that the trial court focused its inquiry on the continuing nature of the conspiracy. If D.R.E. 801(d)(2)(e) did not control admission of Gonzalez's Facebook post, then the judge would not have weighed factors germane to the co-conspirator hearsay exception before ruling it admissible. The State rejects this logical conclusion in favor of a more superficial analysis of the trial court's ruling.

In fact, the State fails to provide another rule of evidence that would support admission of Gonzalez's Facebook post. Instead, the State simply repeats throughout its Answer that the social media post "was not offered to prove the truth of the matter asserted."⁷ Yet in its closing argument, the prosecutor read the Facebook post to the jury and claimed Gonzalez was "bragging about *what he just did* for his buddy."⁸ The record reveals it is the State, not Mr. Moreta, that misunderstands the Superior Court's ruling.

⁶ A-38.

⁷ State's Answer at 7, 9, 10.

⁸ A-171 (emphasis added).

II. THE PROSECUTOR TAINTED THE SUMMATION BY REPEATEDLY INJECTING HIS PERSONAL OPINION AS TO THE GUILT OF MR. MORETA, CASTING DOUBT ON THE INTEGRITY OF THE TRIAL AND RESULTING IN PLAIN ERROR.

A. Argument

The State contends that “the prosecutor did not express his personal belief that Moreta was ‘clearly guilty.’”⁹ Rather, the use of the word ‘clear’ was “conditioned upon the jury’s review of the evidence and application of common sense.”¹⁰ But in this case, there is no meaningful difference between ‘clearly guilty’ and “clear that the defendant intended to kill.”¹¹ In fact, the State concedes that “the critical issue for the jury was whether Moreta ordered and participated in the shooting.”¹² Therefore, the prosecutor’s insinuation that Mr. Moreta ‘clearly’ intended to kill touched upon the critical issue in this case.

The prosecutor plays a special role in the adversarial system that is not limited to representing the State but also includes the responsibility as a minister of justice.¹³ This responsibility demands that the prosecutor avoid improper suggestions, insinuations, and assertions of personal knowledge in order to ensure that guilt is

⁹ State’s Answer at 17 (quoting *Morales v. State*, 133 A.3d 527, 531 (Del. 2016)).

¹⁰ State’s Answer at 16.

¹¹ A-170 (“It is clear that the defendant intended to kill.”)

¹² State’s Answer at 19.

¹³ *Kirkley v. State*, 41 A.3d 372, 376–377 (Del. 2012).

decided only on the basis of sufficient evidence.¹⁴ Because the State failed to uphold that obligation in this case, Mr. Moreta is entitled to a new trial.

¹⁴ *Id.* at 377 (citing *Hardy v. State*, 962 A.2d 244, 247 (Del.2008)).

CONCLUSION

Based on the facts and legal authorities set forth above and in his Opening Brief, Appellant Jose Moreta requests that this Honorable Court reverse his convictions and remand for a new trial.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH
TYPEFACE REQUIREMENT AND TYPE-VOLUME LIMITATION**

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