



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

JARREAU AYERS, )  
)  
Defendant Below- )  
Appellant, ) No. 436, 2019  
) ON APPEAL FROM  
) THE SUPERIOR COURT OF THE  
v. ) STATE OF DELAWARE  
) ID No. 1710003395  
STATE OF DELAWARE, )  
)  
Plaintiff Below- )  
Appellee. )

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
DELAWARE IN AND FOR NEW CASTLE COUNTY

---

**REPLY BRIEF**

**COLLINS & ASSOCIATES**

Patrick J. Collins, ID No. 4692  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801  
(302) 655-4600

*Attorney for Appellant*

Dated: November 30, 2020

**TABLE OF CONTENTS**

ARGUMENT ..... 1

**CLAIM I: THE TRIAL JUDGE ERRED BY NOT CURING PROSECUTORIAL MISCONDUCT IN THE STATE’S REBUTTAL WHEN THE PROSECUTOR IMPROPERLY ASKED THE JURY TO CONSIDER MR. AYERS’ CHARACTER AND BEHAVIOR DURING THE TRIAL** ..... 1

*The State’s claim that the prosecutor was merely arguing from the evidence is squarely contradicted by the record* ..... 1

*Mr. Ayers was prejudiced because the comment touched directly on the jury’s central inquiry into whether the State had proved a case against him* ..... 5

CONCLUSION ..... 7

## ARGUMENT

### **CLAIM I: THE TRIAL JUDGE ERRED BY NOT CURING PROSECUTORIAL MISCONDUCT IN THE STATE’S REBUTTAL WHEN THE PROSECUTOR IMPROPERLY ASKED THE JURY TO CONSIDER MR. AYERS’ CHARACTER AND BEHAVIOR DURING THE TRIAL.**

The State answers the Opening Brief by arguing the prosecutor’s comment was not misconduct and that even if it were, reversal is not warranted.<sup>1</sup> This Reply Brief will address each contention in turn.

#### ***The State’s claim that the prosecutor was merely arguing from the evidence is squarely contradicted by the record***

The State found a passage in Mr. Ayers’ testimony in which he stated, “I mean, y’all been watching me at the trial. I can get emotional at times. But I go into – I snap out. Because my thing is, like I said it – y’all go back and y’all get to listen to that clip. I’m pissed.”<sup>2</sup> The State then conflates that passage with the prosecutor’s improper reference to Mr. Ayers’ character as a *pro se* defendant by asserting that the prosecutor was “merely repeat[ing] Ayers’ testimonial assessment of his demeanor.”<sup>3</sup>

---

<sup>1</sup> Ans. Br. at 29.

<sup>2</sup> Ans. Br. at 30; A2317.

<sup>3</sup> Ans. Br. at 30.

The State argues that “context controls.”<sup>4</sup> Mr. Ayers agrees. The alleged connection between Mr. Ayers’ testimony and the prosecutor’s argument finds no contextual or actual support whatsoever in the record.

The State played a recording of Mr. Ayers angrily yelling at the hostage negotiator. In the State’s selection from Mr. Ayers’ testimony, he was explaining to the jury what happened when he was preparing to get certain people out of the building who had medical issues.<sup>5</sup> No one else wanted to open the door, but Mr. Ayers did because he thought the authorities had agreed to some people coming out.<sup>6</sup> But the outside team rushed the door in all black, with helmets and guns.<sup>7</sup> Mr. Ayers slammed the door shut, grabbed the phone, and yelled at the hostage negotiator.<sup>8</sup> This was the context in which he was trying to explain that he gets emotional at times: “I’m trying to get these people out that’s saying they got medical issues, and y’all rush this damn door.”<sup>9</sup> “So I snap...I’m pissed. I’m trying to do the right thing...trying to follow protocol, how y’all said follow it.”<sup>10</sup>

---

<sup>4</sup> Ans. Br. at 29.

<sup>5</sup> A2315-2316.

<sup>6</sup> A2316.

<sup>7</sup> A2317.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> A2318.

After Royal Downs talked to the negotiator again on the walkie-talkie, the situation was resolved, and Mr. Ayers did open the door again; the inmates with medical issues and CO Wilkinson were released.”<sup>11</sup>

Obviously, the prosecutor’s improper characterization of Mr. Ayers’ character had nothing to do with Mr. Ayers’ trial testimony. The State’s assertion that that the prosecutor “merely repeated Ayers’ testimonial assertion of his demeanor”<sup>12</sup> lacks any basis in fact. The prosecutor was urging the jury to disbelieve Mr. Ayers’ testimony that even though it pained him, he abided by his friends’ wishes and stayed outside the building during the riot:

He heard the sounds from inside the building, the violent takeover had begun. But yet his testimony was that he was left to stay in the yard, he couldn’t go inside. He was going to wait while his loved ones were inside doing what he knew, and endorsed, [was] happening.

You spent the better part of the last month with Jarreau Ayers. What about Mr. Ayers suggests that he is that person? That he is not going to do exactly what he wants to do, which is to go inside and join in what’s happening there.

Ten minutes outside, just waiting, and then some other person comes to the door and now he can go inside? It just doesn’t make sense.<sup>13</sup>

The prosecutor is in clearly telling the jury to consider Mr. Ayers’ courtroom demeanor as a *pro se* defendant and then decide whether he is the sort of person

---

<sup>11</sup> A2318-2319.

<sup>12</sup> Ans. Br. at 30.

<sup>13</sup> A2591-2592.

who would comply with his friends' request or do exactly what he wanted to do. None of this has anything to do with Mr. Ayers' testimony. Mr. Ayers testified that he gets emotional at times. The prosecutor asked the jury to observe that he does exactly what he wants to do. There is a significant difference between the two. Mr. Ayers was explaining why he got upset with the hostage negotiator. The prosecutor was asking the jury to make an improper conclusion of Mr. Ayers' propensity to do what he feels like doing.

As further demonstration of the lack of connection between the prosecutor's comments and Mr. Ayers' testimony, one need only look at the record – or more to the point, what is missing from the record. The prosecutor makes no reference to it. There is no “As you heard Mr. Ayers testify...,” “As the evidence of Mr. Ayers' own ‘snapping out’ makes clear...” or anything of the sort. The prosecutor made no such linkage to the evidence; the improper comment was untethered to any evidence. The State appears to have located this argument for appellate purposes. Moreover, when Mr. Ayers lodged his objection, the prosecutor made no argument that he was merely referring to evidence found in Mr. Ayers' testimony.

Given the foregoing, this Court should firmly reject the State's assertion that the prosecutor was arguing based on evidence and instead find that the prosecutor committed misconduct.

***Mr. Ayers was prejudiced because the comment touched directly on the jury's central inquiry into whether the State had proved a case against him***

The State argues that the case was not close because there was evidence of Mr. Ayers' involvement in collecting storage boxes and facilitating the release of inmates and guards.<sup>14</sup> The State further argues that Mr. Ayers was in favor of an uprising,<sup>15</sup> eliding the fact that he was not in favor of a violent takeover. Just as the prosecutors did at trial, the State still cannot explain how its star witness Royal Downs, the only witness who got a deal, did not implicate Mr. Ayers at all.<sup>16</sup> Dwayne Staats, the self-confessed planner, recruiter, and leader of the riot, testified that he deliberately excluded Mr. Ayers because Mr. Ayers had "just gotten off crutches."<sup>17</sup>

The State did not have a good case against Mr. Ayers for anything but walking around after the violence was over and helping to facilitate the release of inmates. The steady stream of contradictory inmate testimony and general lack of forensic evidence made that clear. The State even admitted in closing that Mr. Ayers did not murder, assault, or kidnap anyone.<sup>18</sup> In fact, the jury found him not guilty of murder. It was the State's need to portray Mr. Ayers as a hothead who

---

<sup>14</sup> Ans. Br. at 33.

<sup>15</sup> *Id.*

<sup>16</sup> A1201.

<sup>17</sup> A2409.

<sup>18</sup> A2521.

does exactly what he feels like doing that makes this one incident of prosecutorial misconduct so central to the case. The State needed that improper character evidence to convince the jury he was an accomplice, or even a principal who would not stay outside when his brethren were engaged in the actual riot.

As to the last step in the analysis, the State concedes that there were no steps taken to mitigate the error.<sup>19</sup>

The inexorable conclusion is that the prosecutor made an improper comment during rebuttal closing, inviting the jury to consider what type of person Mr. Ayers is based on how he acted – not during the incident – but during the trial itself. This improper comment was prejudicial because the case was a close one for Mr. Ayers and the misconduct went to the very heart of the case – the jury’s determination of Mr. Ayers’ role, if any, in the crimes charged.

---

<sup>19</sup> Ans. Br. at 34.



## **CONCLUSION**

For the foregoing reasons, as well as those set forth in the Opening Brief, Appellant Jarreau Ayers respectfully requests that this Court reverse the judgment of the Superior Court.

### **COLLINS & ASSOCIATES**

*/s/ Patrick J. Collins*

Patrick J. Collins, ID No. 4692  
8 East 13<sup>th</sup> Street  
Wilmington, DE 19801  
(302) 655-4600

*Attorney for Appellant*

Dated: November 30, 2020