



IN THE SUPREME COURT OF THE STATE OF DELAWARE

LUIS R. ROSAS-JOSE,)
)
 Defendant Below,)
 Appellant,)
) **No. 329, 2022**
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

APPELLANT’S REPLY BRIEF

**ON APPEAL FROM THE SUPERIOR COURT
IN AND OF KENT COUNTY**

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: March 13, 2023

TABLE OF CONTENTS

TABLE OF CITATIONSii

ARGUMENT

**I. THE TRIAL COURT ERRED WHEN IT
IMPROPERLY ADMITTED HEARSAY
EVIDENCE TO PROVE ROSAS AGE, AN
ESSENTIAL ELEMENT TO THE FIRST AND
SECOND DEGREE RAPE CHARGES1**

CONCLUSION5

TABLE OF CITATIONS

Cases

Dubin v. State, 397 A.2d 132 (Del. 1979).....4

State v. LeGrande, 2008 WL 4817058 (Del. Super. Ct. Oct. 20, 2008)2

United States v. Dupree, 617 F.3d 724 (3d Cir. 2010).....2

United States v. Merritt, 1998 WL 196614 (4th Cir. Apr. 22, 1998).....3

United States v. Pluta, 176 F.3d 43 (2d Cir. 1999).....2

United States v. Tracey, 597 F.3d 140 (3d Cir. 2010)2

Walls v. State, 560 A.2d 1038 (Del. 1989).....4

I. THE TRIAL COURT ERRED WHEN IT IMPROPERLY ADMITTED HEARSAY EVIDENCE TO PROVE ROSAS AGE, AN ESSENTIAL ELEMENT TO THE FIRST AND SECOND DEGREE RAPE CHARGES.

Properly, in its answering brief, the State does not defend or advance the Superior Court’s decision that the Mexican driver’s license found on Rosas was self-authenticating. Ans. Br. at 10, n.56. What the State fails to recognize is that the court made this ruling in response to the prosecutor’s arguments below. Despite defense counsel’s objection on hearsay grounds as to the information contained on the foreign ID, the prosecutor repeatedly argued that the ID was a “legally binding document[]”, reliable enough to pass authentication. A20, A38-39. Moreover, in overruling defense counsel’s objection and finding that the ID was self-authenticating, the court relied on the State’s assertion that “there will be other evidence on this issue as well”. A19, A39. However, the record reflects that the State never presented other such evidence at trial.

Now on appeal, perhaps sensing that it could be effective and realizing the weakness in its argument below, the State advances new positions for the admissibility of the information on the identification card. The State’s new argument is that the information on the driver’s license was excluded from the rule against hearsay under D.R.E. 801(d)(1)(B). Ans. Br. at 11. Alternatively, the State argues for the first time that even if the statement of Rosas’ birthdate was not

excluded, it was admissible under the residual hearsay exception of D.R.E. 807. Ans. Br. at 17.

Waiver applies with equal force to the State as it does to the Defense. The State no longer posits that the foreign driver's license found on Rosas was self-authenticating. As detailed above, the State now advances different and alternative arguments not previously presented to the Superior Court below. *State v. LeGrande*, 2008 WL 4817058, at *1 (Del. Super. Ct. Oct. 20, 2008). Having framed the legal issue squarely below, the State may not now paint a different picture on appeal. *United States v. Dupree*, 617 F.3d 724, 730 (3d Cir. 2010). Thus, the State has waived these arguments by failing to raise them before the Superior Court. *United States v. Tracey*, 597 F.3d 140, 149 (3d Cir. 2010).

Appellant argued in his Opening Brief that there is no hearsay exception that allows for the admission of non-passport foreign identification cards or the truth of the information contained therein. *United States v. Pluta*, 176 F.3d 43 (2d Cir. 1999). The State has not responded to that argument because the Court's decisions do not support that position which is reflected in the State's argument. Instead, failing to align supportive legal authority on the specific issue in the case at bar, the State asks this Court to employ the Ninth Circuit's "possession plus" test. Ans. Br. at 12. The authority that the State relies on does not support the State's position and, in fact, supports the Defendant's argument when examined closely. In essence, under the

test, the possessor and the document have to be tied together “in some meaningful way”. *United States v. Merritt*, 1998 WL 196614, at *1 (4th Cir. Apr. 22, 1998). Here, other than possessing the Mexican identification card, the “plus” portion of the test is absent as there is nothing tying the card and Rosas together in some meaningful way. Thus, there is no support in the record to support the necessary predicate of the State's argument.

Moreover, survival of the State’s arguments requires this Court to accept and adopt significant presumptions unsupported by the record. For example, “that the country of Mexico *presumably* would not have issued a driver’s license to Rosas without some assurance that he could safely drive a motor vehicle”. Ans. Br. at 18. Also, that “[p]*resumptively*, Rosas would have presented this Mexican driver’s license to the officer who issued him a ticket while driving the minivan to prove his identity and his legal authorization to drive a car.” Ans. Br. at 15. The record is completely devoid of any evidence supporting any of these assumptions. Significantly, the State also fails to acknowledge or address the fact that when Rosas was apprehended, he had two forms of identification. A Mexican driver’s license bearing his name and second identification bearing another name. A17, A20.

Finally, the State properly admits that “[t]he admission of the Mexican driver’s license concerns only one element of the Rape First Degree charges—Rosas’ age.” Ans. Br. at 20. The significance of proving any single element required for conviction

can not be overstated. “It is axiomatic in a criminal case that the State must prove beyond a reasonable doubt every element of the offense charged.” *Dubin v. State*, 397 A.2d 132, 134 (Del. 1979). “If the prosecution fails to sustain that burden on any element of the crime, the defendant must be acquitted of that charge.” *Walls v. State*, 560 A.2d 1038, 1046 (Del. 1989). Here, the information on the ID was critical because the State relied on the contents to prove Rosas’ date of birth and one of the necessary elements in the indictment for all the counts of rape first degree. Since the information was offered for the truth of the information contained therein, it was impermissible hearsay used to prove the essential element of Rosas’ age for purposes of the charges for rape first degree. Thus, the convictions at bar should be reversed.

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Rosas' convictions should be reversed.

\s\ Santino Ceccotti
Santino Ceccotti, Esquire

DATE: March 13, 2023