



IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|---------------------------|
| RONALD SUBER, |) | |
| |) | |
| Defendant Below- |) | |
| Appellant, |) | No. 392, 2023 |
| |) | |
| |) | ON APPEAL FROM |
| v. |) | THE SUPERIOR COURT OF THE |
| |) | STATE OF DELAWARE |
| STATE OF DELAWARE, |) | ID No. 2108011433A |
| |) | |
| Plaintiff Below- |) | |
| Appellee. |) | |

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

REPLY BRIEF

**COLLINS PRICE WARNER
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Dated: April 17, 2025

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Ronald Suber, through the undersigned attorney, replies to the State's Answering Brief as follows:

ARGUMENT

I. MR. SUBER'S CONFRONTATION RIGHTS WERE VIOLATED WHEN THE STATE ELICITED INDIRECT HEARSAY FROM THE DETECTIVE ESTABLISHING THAT BRIAN MAY, WHO DID NOT TESTIFY, IDENTIFIED MR. SUBER FROM A PHOTO LINEUP.

The State sought to prove that Ronald Suber murdered Anna Hurst and attempted to murder Brian May. But the State, despite being granted a continuance of the trial, could not locate May. At trial, the State nevertheless found a way to get Brian May's identification of Mr. Suber as the shooter in front of the jury:

PROSECUTOR: Without telling me anything he said, was [May] shown a photo lineup?

DETECTIVE RYDE: Yes.

PROSECUTOR: Without telling me anything he said, did he identify someone in that lineup?

RYDE: Yes.

PROSECUTOR: Were subsequent interviews with Brian May conducted?

RYDE: Yes.

PROSECUTOR: Who conducted those follow-up interviews?

RYDE: I did.

PROSECUTOR: Were all of those interviews recorded?

RYDE: Yes.

PROSECUTOR: As a result of your interview in [sic] the photo lineup, did you get an arrest warrant?

RYDE: Yes.

PROSECUTOR: Who was the arrest warrant for?

RYDE: Ronald Suber, Junior.

PROSECUTOR: What were the charges?

RYDE: Murder First Degree, Attempted Murder First Degree, Possession of a Firearm During Commission of a Felony, two counts of that, and Possession of a Firearm by a Person Prohibited.¹

The State agrees that this exchange constituted impermissible indirect hearsay.² But the State seeks to preserve Mr. Suber's convictions. The State argues that since trial counsel did not object, the case must be reviewed for plain error.³ The State contends that Mr. Suber cannot establish plain error because the Confrontation Clause violation was harmless.⁴

Plain error is a high burden. This Court has held that "[T]he doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly

¹ A374.

² Ans. Br. at 18-21.

³ Ans. Br. at 22-23.

⁴ Ans. Br. at 21.

deprive an accused of a substantial right, or which clearly show manifest injustice.”⁵

But this constitutional violation overcomes the plain error hurdle. The material defect, as the State concedes, is apparent on the face of the record. The right to confront witnesses is a fundamental and substantial right. The State’s elicitation of indirect hearsay identification evidence was a manifest injustice that affected the integrity of the trial process.

As the State points out, plain error is error so blatant that the trial judge should *sua sponte* intervene in the absence of an objection.⁶ The State’s conduct here indeed necessitated intervention from the trial judge when it became obvious that the defense was not going to object. The State’s elicitation of the indirect hearsay was orderly, sequential, and deliberate. Anyone, including the judge, should have seen where it was going and put a stop to it. Or, once the prosecutor elicited the final testimony about Ryde’s decision to arrest Mr. Suber, the judge could have easily instructed the jury to disregard the testimony – even though defense counsel did not ask for an instruction. The error was that blatant.

⁵ *Id.*

⁶ Ans. Br. at 16, *citing, Morales v. State*, 133 A.3d 527, 533 (Del. 2016)(Strine, CJ, concurring). *See also, Kent v. State*, 2021 WL 4393804 at *3 (Del. Sept. 24, 2021)(on plain error review, Court could not conclude that trial judge should have *sua sponte* acquitted defendant in the absence of a defense motion).

The error in Mr. Suber's trial was not harmless beyond a reasonable doubt.

Constitutional error cannot be held harmless unless the reviewing court finds “beyond a reasonable doubt that error complained of did not contribute to the verdict obtained.”⁷ Whether an error is harmless depends on a number of factors, such as the importance of the witness’s testimony, whether that testimony was cumulative evidence, the presence or absence of corroborative or contradictory evidence, and the overall strength of the prosecution’s case.⁸ In sum, the reviewing court must be sure beyond a reasonable doubt that the guilty verdicts at trial were not attributable to the constitutional error.⁹

Mr. Suber, in the Opening Brief, discussed at length that this Court’s language indicating that the constitutional error must be a principal factor in the conviction does not accurately reflect the harmless error standard.¹⁰ The “principal factor” language was taken from another case in which the error *was* likely a principal factor in the conviction. But the opposite is not true. There is no requirement that the testimony arising from the error be a principal factor in the conviction to withstand harmless error analysis. The well-established standard is

⁷ *Chapman v. California*, 368 U.S. 18, 24 (1967).

⁸ *Delaware v. VanArsdall*, 475 U.S. 673, 684 (1986).

⁹ *Sullivan v. Louisiana*, 508 U.S. 275, 279 (1993).

¹⁰ *See*, Op. Br. at 37-39.

that the confrontation clause error, as here, must be harmless beyond a reasonable doubt. It was not.

The State has neglected the importance of May's indirect hearsay bolstering the credibility of the accomplice Tori Balfour. Most of the incriminating evidence came from her. Because Balfour was an accomplice, the jury was instructed to view Balfour's evidence with "more care and caution" than the testimony of a witness who was not an accomplice.¹¹ The jury was further instructed that the care and caution is even more pronounced when there is nothing in the evidence to corroborate the accomplice's testimony that the defendant committed the crime. The Court instructed the jury that without corroboration, the jury should not convict unless satisfied that the accomplice's testimony was true.¹²

The improper indirect hearsay of May's identification of Mr. Suber from a photo lineup gave the jury the corroboration it needed to find Balfour credible. She was no longer an accomplice testifying in exchange for a deal. Her identification of Mr. Suber was corroborated – by Brian May, through indirect hearsay. The improper identification evidence cannot be isolated for harmless error purposes due to the corroborative effect it had for the State's main witness.

¹¹ A1129.

¹² A1129-1130.

The rest of the evidence – not provided by Balfour or indirect hearsay – was insufficient to sustain a conviction. In fact, Jeanine Thomas heard what sounded like a female voice call out, “get out, get out, get out” followed by “pull her by the hair” just before the gunshots.¹³ That testimony tends to establish that Balfour was more involved with doing harm to Anna Hurst than she admitted from the witness stand. With the absent Brian May’s corroboration, however, the jury clearly believed Balfour’s account.

Moreover, May’s indirect hearsay permeated the trial beyond Ryde’s testimony. The State gratuitously offered two additional police witnesses: one who created the photo lineup and one who showed it to May. These witnesses served to remind the jury that May had identified Mr. Suber as the shooter.

Given the centrality of the confrontation clause error, combined with the important corroboration the improperly elicited identification provided for Balfour, this error was not harmless beyond a reasonable doubt. This Court should vacate Mr. Suber’s convictions and remand for a new trial.

¹³ A395.

CONCLUSION

Based on the foregoing, as well as the arguments in the Opening Brief, this Court should find that Mr. Suber's trial contained violations of the hearsay rule and the Confrontation Clause. This Court should also find that the error was not harmless, and reverse and remand for a new trial.

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