

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ONEIL ROSE,	§	
	§	Nos. 132, 2013 and 133, 2013
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. I.D. No. 1206001558
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 12, 2014

Decided: March 25, 2014

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 25th day of March 2014, on consideration of the briefs of the parties, it appears to the Court that:

1) Oneil Rose appeals from his convictions, after a jury trial, of attempted first degree assault, first degree assault, three counts of first degree reckless endangering, five counts of possession of a firearm during the commission of a felony (PFDCF), and possession of a firearm by a person prohibited. Because the State concedes that a supplemental jury instruction constituted plain error, Rose's convictions for

attempted first degree assault and the related conviction for PFDCF are reversed. The remaining convictions are affirmed.

2) Rose was involved in a shooting that took place on June 2, 2012, in a restaurant in New Castle, Delaware. Venus Cherry, who had once been Rose's friend but was not at the time, saw Rose at the restaurant. Rose lifted his shirt to show the gun in his waistband. Later, Cherry saw Rose in a "tussle" with a man named Trini. After Cherry intervened, Rose started walking toward Cherry with his loaded gun pointed at him. Cherry told Rose that if he was going to shoot, he should go ahead and do it.

3) Ferron Nelson, a man who was nearby, separated Rose and Cherry, and told Rose to put the gun in his car. Rose started to walk away, but then turned and ran after Cherry, who started running toward a car owned by Natalee Chambers. The two men faced off at the back of the car. Rose pointed his gun at Cherry's face. Cherry hit Rose in the arm, and the gun fired. Cherry then punched Rose in the face, and Rose dropped the gun. While Cherry and Rose were running toward Chambers' car, April Harris was putting her daughter into that car. Harris was in the car when she heard a pop and felt a tingling in her arm. She had been shot.

4) Rose was indicted in July 2012 and his trial began on January 2, 2013. On January 9, 2013, just before the defense began presenting its case, the trial court

expressed concern about the jury's ability to understand Rose because he has a heavy Jamaican accent. The trial court instructed the jurors to raise their hands if they could not understand his testimony. The trial court refused Rose's request that his friend, Hermalee Christie, act as interpreter. But Christie was allowed to assist defense counsel in understanding what Rose said.

5) Rose raises two claims on appeal. We review the claims for plain error, which is error that is "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."¹ The State agrees that his first claim has merit. We also conclude that the trial court impermissibly commented on the evidence in its supplementary instruction to the jury. That error requires reversal of the convictions for attempted assault and the related PFDCF offense.

6) The second claim is that the trial court's failure to appoint an interpreter violated his Sixth Amendment right to a fair trial. Rose speaks English with a heavy Jamaican accent. Both the trial court and counsel found it difficult to understand him, especially when Rose spoke rapidly. The trial court told Rose to "slow down" several times, and it instructed the jurors to raise their hands if they did not understand Rose at anytime during his testimony. No juror raised a hand.

¹ *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

7) In general, the decision to use an interpreter falls within the trial court's discretion, "and the propriety of [the court's] action is to be weighed in light of all relevant circumstances."² But, the failure to appoint an official interpreter violates a defendant's constitutional rights where:

(1) what is told [to the defendant] is incomprehensible; (2) the accuracy and scope of a translation . . . is subject to grave doubt; (3) the nature of the proceeding is not explained to [the defendant] in a manner designed to insure his full comprehension; or (4) a credible claim of incapacity to understand due to language difficulty is made and the [trial] court fails to review the evidence and make appropriate findings of fact.³

8) Rose does not argue that any of those circumstances apply to him. Instead he cites to authorities in other jurisdictions holding that an interpreter may be required if a defendant has an imperfect command of English, and the defendant decides to testify. Those authorities are inapposite, since Rose has a perfect command of English – his native language.

(9) The only issue at trial was whether Rose's strong accent prevented the jurors from understanding his testimony. The trial court addressed that issue by telling Rose to speak slowly, and by telling the jurors to raise their hands if they could not understand anything Rose said. No juror raised a hand. In sum, there is nothing

² *Garcia v. State*, 1986 WL 16978 at *2 (Del. Supr.).

³ *Chao v. State*, 604 A.2d 1351, 1362 (Del. 1992) *overruled on other grounds by Williams v. State*, 818 A.2d 906 (Del. 2002).

in this record to suggest that Rose had any difficulty understanding questions, or that the jury was unable to understand his answers. As a result, we find no plain error.

NOW, THEREFORE, IT IS ORDERED that the convictions for attempted assault and one count of PFDCF are REVERSED, and all remaining convictions are AFFIRMED. This matter is REMANDED to the Superior Court for further action in accordance with this decision.

BY THE COURT:

/s/ Carolyn Berger
Justice