IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES HALL,)			
)			
Defendant-Below,)			
Appellant)			
)			
v.)	No.	171,	2012
)			
)			
)			
STATE OF DELAWARE)			
)			
Plaintiff-Below,)			
Appellee.)			
	APPELLANT'S	REPLY	BRIEF	

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

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DATE: September 24, 2012

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I. BECAUSE HALL'S NICKNAME, "NASTY NATE," WAS NOT RELEVANT TO ANY PROPER PURPOSE AND BECAUSE IT STRONGLY SUGGESTED THAT HALL HAD A PROPENSITY FOR CRIMINAL CONDUCT, THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED HALL HIS RIGHTS TO A FAIR TRIAL WHEN IT ALLOWED THE PROSECUTOR TO INTRODUCE THAT NICKNAME THROUGH HIS WITNESSES, USE THAT NICKNAME DURING QUESTIONING AND REFER TO HALL BY THAT NICKNAME DURING HIS CLOSING ARGUMENT.

As it did below, the State erroneously claims that the use of the nickname "Nasty Nate" was necessary for the purpose of identification. Resp.Br. at 8-9. That claim was rejected in Taylor v. State when this Court required that, at a new trial, references to the defendant's nickname should be deleted to the extent possible. In fact, it found that even where the witnesses only knew the defendant by his nickname the State could ask them whether they recognized the defendant rather than highlighting his nickname. Similarly, in our case, "Nasty Nate" could have been deleted without causing undue prejudice to the State.

¹ It does not appear from this record that the State's witnesses had to be allowed to use [the nickname] instead of [the defendant's] given name. Those witnesses who only knew Taylor by his nickname could have been asked, in court, whether they recognized defendant, without asking what name they knew him by. The questioning then could have proceeded using Taylor's real name. Again, in the retrial, the court should make an effort to delete all references to Taylor's nickname, if possible.

²³ A.2d 851, 857 (Del. 2011).

The nickname was not probative of an explanation of how the police investigation unfolded. Thus, it would have been easier in our case than it was in *Taylor* to sanitize the evidence.

The State continues to speculate that if it had deleted reference to "Nasty Nate" at trial defense counsel would have exploited that and argued that "Nate" was not Hall. Resp.Br. at 9. However, the record does not show that to be the case. For example, Bush supposedly gave police the nickname "Nasty Nate" as the person who assaulted him. Police put the nickname "Nate" in the database and obtained Hall's name and photograph. Hall did not attempt to exploit this fact in order to argue that "Nate" and "Nasty Nate" were or could have been two separate people.

The State claims that it was unlikely the jury would identify "Nasty Nate" as a negative connotation. Resp.Br. at 10. However, in *United States v. Clark*, the court found the nickname "Mauser" to be prejudicial because it is a type of German gun. 541 F.2d 1016, 1018 (4th Cir. 1976). It is less likely that an average juror would immediately identify the prejudicial nature of the term "Mauser" than it would the term "Nasty."

Among other pejorative meanings, a common definition of the term "Nasty" is "causing severe pain or suffering." ² Here, Hall was charged with the "harmful" crime of Assault 1st Degree which includes causing "serious physical injury" as an element. On appeal, the State attempts to downplay its frequent and unnecessary use at trial and in closing argument of this pejorative nickname. Resp.Br. at 11. However, in addition to asking several unnecessary questions about the nickname, the prosecutor gratuitously mentioned the nickname multiple times during closing.³

² "Nasty Nate" strongly suggests a propensity for committing the crimes with which Hall was charged. The ordinary definition of the word "nasty" includes "disgustingly filthy;" "physically repugnant;" "extremely hazardous or harmful;" and "causing severe pain or suffering." Merriam Webster's Dictionary 10th ed. 773. The Court agreed with defense counsel that due to Hall's "normal" appearance, a juror could infer that the nickname was a result of his actions. A-14.

³ Cases cited by the State that did not reverse due to the use of a nickname are distinguishable in that they involve infrequent and or necessary uses of the nickname. See Resp.Br. at n.24, 36 (citing Com. v. Martinez, 940 N.E.2d 422, 434-35 (2011) (finding prosecutor's confined references to the nickname "Pinocchio" was not reversible when it was the only name by which the witnesses knew the defendant); State v. Edwards, 750 So. 2d 893, 903 (La. 1999) (finding single reference to nickname "Gunslinger" during penalty phase was not error where there was overwhelming evidence of guilt); People v. Lee, 248 P.3d 651, 673 (2011) (finding reference to nickname "Point Blank" did not portray a propensity to rape women); United States v. Roberson, 124 Fed. Appx. 860, 862 (5th Cir. 2005) (finding nickname "Loco" not indicative of criminal disposition and handwritten letters identifying the defendant's handwriting in letters found at crime scene

The abuse of discretion by the trial court in this case was so significant that it violated Hall's right to due process under both the Delaware and United States Constitutions. See Zebroski v. State, 715 A.2d 75, 79 (Del. 1998) (noting that the introduction of inflammatory material violates the due process clauses of both the United States and Delaware Constitutions when the introduction serves no proper purpose). Hall's convictions must be reversed due to the improper admission of unduly prejudicial evidence and its denial of his rights to due process.

were signed with that nickname); United States v. Dean, 59 F.3d 1479, 1492 ($5^{\rm th}$ Cir. 1995) (finding nickname "Crazy K" not indicative of criminal disposition was necessary to distinguish him from the co-defendant who had the same first name)).

CONCLUSION

For the foregoing reasons and upon the authority cited herein, the undersigned respectfully submits that Hall's convictions must be reversed.

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DATE: September 24, 2012