



IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEPHEN HAIRSTON,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 53, 2020
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

NICOLE M. WALKER [#4012]  
Office of Public Defender  
Carvel State Office Building  
820 N. French Street  
Wilmington, Delaware 19801  
(302) 577-5121

Attorney for Appellant

DATED: October 12, 2020

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**I. NOT ONLY DID THE TRIAL COURT ERR AS A MATTER OF LAW WHEN IT SUPPLANTED THE PLAIN LANGUAGE OF THE NOTICE AND DEMAND STATUTE APPLICABLE IN CONTROLLED SUBSTANCE CASES WITH AN INAPPLICABLE EVIDENTIARY STANDARD, IT DENIED HAIRSTON HIS CONSTITUTIONAL RIGHT TO CONFRONT THE WITNESS WHICH THE STATE WAS REQUIRED TO PRESENT AT TRIAL.**

The State erroneously dismisses Hairston’s reliance on *State v. Croce*<sup>1</sup> based, in part, on the fact that *Croce* “preceded this Court’s opinion [in] *A.W. Financial Services*[, *S.A. v. Empire Resources, Inc.*],<sup>2</sup> and thus was not afforded this Court’s interpretive guidance in assessing the statutes’ interaction with established common law.”<sup>3</sup> Yet, the State ignores the most “elementary rule of [statutory] construction that effect must be given, if possible, to every word, clause and sentence of a statute.”<sup>4</sup> That principle precedes both *Croce* and *A.W. Financial Services* and remains in force today. Here, “the intent of the legislature is clearly reflected by unambiguous language in [§§4132-4133]” and supports a finding that Lynch was required

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<sup>1</sup> 1997 WL 524070, at \*1 (Del. Super. Ct. May 14, 1997).

<sup>2</sup> 981 A.2d 1114 (Del. 2009).

<sup>3</sup> State’s Ans.Br. at pp. 27-28.

<sup>4</sup>*Croce*, 1997 WL 524070, at \*4 (quoting *Sutherland Stat. Const.* § 46.06 (5th Ed.)).

to testify at trial.<sup>5</sup> Thus, the State’s argument simply boils down to urging this Court to just ignore the statutes.

The State correctly notes that the legislation contemplates a means of relieving the State of the burden of producing “the chemist and all of the police officers handling seized drugs.”<sup>6</sup> However, this is only “*unless the defense makes a proper demand for such appearances.*”<sup>7</sup> If a demand *is* made, as it was in this case, the statute is implicated and the State’s burden is heightened and specific. In other words, the legislature “enacted a statute which vests the defendant in a [drug] case with the right to demand that the State produce [the seizing officer and the packaging officer]. This procedural right is balanced in the statute by requiring notice to the prosecution without which the witnesses do not have to appear.”<sup>8</sup>

To interpret the statute as the State urges would be to render it meaningless. The State itself spends quite a bit of time explaining that under common law, it is not required to produce specific witnesses in the chain. In *Croce*, the court illustrated that a chain-of-custody statute could address the logistical concerns of the State and also place a specific burden on the State

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<sup>5</sup>*Croce*, 1997 WL 524070, at \*4 (quoting *Spielberg v. State*, 558 A.2d 291, 293 (Del. 1989)) (citations omitted).

<sup>6</sup> State’s Ans.Br. at 20.

<sup>7</sup> State’s Ans.Br. at 20.

<sup>8</sup> *Croce*, 1997 WL 524070, at \*3.

as to which witnesses it must present when it discussed the distinction between the narrow language used in § 4177 (h) (4) and that used in 23 *Del.C.* § 2303 (d) (5).

With respect to Hairston’s right to confront Lynch, the State is correct that the Confrontation Clause does not require everyone in the chain of custody to testify at trial. But, it does require the State to identify which steps in the chain of custody are “so crucial as to require evidence” and, “if the defendant objects,” to present that evidence live.<sup>9</sup> Here, in the creation of §§ 4331-4332, the State identified the seizing officer and the packaging officer as crucial links in the chain of custody. Of course, Lynch’s testimony was relevant to the chain of custody. In that respect, it was Lynch’s method and reliability of collection and packaging of the evidence that was subject to cross-examination. Further, unlike in *Milligan v. State*,<sup>10</sup> but like the reports introduced in *Melendez-Diaz*, *Bullcoming v. Mexico*,<sup>11</sup> and *Martin v. State*,<sup>12</sup> Lynch’s testimonial statements were relevant to more than just simple chain of custody issues. Lynch was the seizing officer in a case where possession was an element of an offense. Bartolo “could not convey what [Lynch] knew

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<sup>9</sup> *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 310 n.1 (2009).

<sup>10</sup> 116 A.3d 1232, 1240-1241 (Del. 2015).

<sup>11</sup> 564 U.S. 647 (2011).

<sup>12</sup> *Martin v. State*, 60 A.3d 1100 (Del. 2013).

or observed about the events” involved in the possession of the evidence during the time he was away from the car.<sup>13</sup> Bartolo had no first-hand knowledge regarding Lynch’s possession of the drug evidence during the time Bartolo was off assisting MacNamara. The officers had located the powdery substance and suspected the presence of marijuana before MacNamara left Lynch with the vehicle.

Therefore, Hairston was denied the right to cross examine Lynch with respect to his collection and packaging of the drug evidence and Bartolo's “surrogate testimony ... d[id] not meet the constitutional requirement” under the Confrontation Clause.<sup>14</sup> Accordingly, this Court must reverse Hairston’s convictions of aggravated possession of heroin and possession of marijuana.

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<sup>13</sup> *Bullcoming*, 564 U.S. at 661.

<sup>14</sup> *Id.* at 652.

## CONCLUSION

For the reasons and upon the authorities cited herein, Hairston's convictions of Aggravated Possession of heroin and Possession of marijuana must be reversed.

Respectfully submitted,

/s/ Nicole M. Walker  
Nicole M. Walker [#4012]  
Carvel State Building  
820 North French Street  
Wilmington, DE 19801

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