



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 CORRECTED OPENING BRIEF

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

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NATURE AND STAGE OF THE PROCEEDINGS

Luis R. Rosas-Jose (“Rosas”) was charged as part of a 21 count indictment which included the following charges: one count of burglary first degree, one count of possession of burglar’s tools, twelve counts of rape first degree, two counts of rape second degree, three counts of unlawful sexual contact first degree, one count of offensive touching, and one count of failure to comply with taking of photos and fingerprints. (A10).

A four-day jury trial commenced on July 11, 2022. The State *nolle prossed* two counts of rape first degree and one count of possession of burglary tools was dismissed following a motion for judgment of acquittal. Rosas was acquitted of two counts of rape first degree, two counts of rape second degree, one count of unlawful sexual contact and one count of failure to comply with taking of photos and fingerprints. He was convicted on all remaining counts. Rosas was to sentenced 202 years at Level 5 followed by various levels of probation (*See* Sentence Order, attached as Ex. C).

Rosas filed a timely notice of appeal. This is his opening brief in support of that appeal.

SUMMARY OF THE ARGUMENT

1. The trial court erred in finding that a non-passport foreign identification card is self-authenticating and admitting it and the contents therein into evidence over defense counsel's hearsay objection. Since the information was offered for the truth of the information contained therein, it was used for to prove the essential element of Rosas' age for purposes of the charges for rape first and second degree. Thus, the convictions at bar should be reversed.

2. Viewing the evidence in the light most favorable to the prosecution fails to establish that Rosas had the intent to commit a crime inside before or at the time he entered the dwelling beyond a reasonable doubt. Therefore, the Burglary conviction must be reversed.

STATEMENT OF FACTS

On October 22, 2020, Sergeant Timothy Powell of Delaware State Police was dispatched to 21992 Charles Drive in Millsboro, Sussex County Delaware on report of a sexual assault. (A29). The alleged subject of the investigation was K.P., the complainant in this matter, who was eleven at the time. (A30). The complainant testified that on October 22, 2020, she assisted her two siblings get ready for their in-person schooling during the COVID pandemic. She had a designated virtual school day. (A45). The complainant testified that she was woken up by Rosas, who she refers to as her step-uncle. According to the complainant she was raped and sexually assaulted in various rooms of the home. (A49). The first incident was alleged to have occurred in the complainant's bedroom. (A84). The complainant testified that after this assault, she went to the bathroom. After leaving the bathroom, the complainant alleged that she was then attacked in her mother's room. (A85). After this, the complainant went to make tea in the kitchen when she alleges Rosas fondled her. (A86). She alleges he then proceeded to rape her on the living room couch, before he left the residence. (A87). The complainant could not recall how much time had lapsed between all the incidents on the day in question. (A88).

On October 22, 2020, the complainant was interviewed at the Children's Advocacy Center of Delaware ("CAC"). (A54). The complainant admitted that she

had lied to police regarding the whereabouts of her mother on the day in question. She stated that her mother went to Walmart when she had actually gone to work. (A59).

The investigation led police to develop Rosas as a suspect. (A34). On the date of the arrest, police recovered a Mexican identification card on his person and second identification bearing another name. (A37). The date of birth listed on the ID card was August 11, 1995. (A42). After police responded, the complainant was taken to TidalHealth Nanticoke for a Sexual Assault Nurse Examination (“SANE”). (A180). As part of the examination, the complainant was swabbed for DNA. (A187). The SANE nurse testified that despite having external redness around the complainant’s vaginal and anal areas this could have been caused by factors other than sexual trauma, given the complainant's age. (A222). The DNA collected as part of the SANE kit matched Rosas’ DNA profile.

Rosas exercised his right to testify on his own behalf at trial. (A303). Rosas lived in Bay City, Long Neck in Sussex County. He frequented the residence at 21992 Charles Drive often because it was occupied by his brother, sister-in-law and nieces and nephews. (A303). Rosas testified that on the day in question he went to his brother’s house to pick up a nail gun for work around 8:00 A.M. (A305). Rosas encountered the complainant awake as the only occupant inside the residence. (A306). Rosas testified that the complainant called him into her room

and she proceeded to pull down her pants at which point he proceeded to the living room. (A308). The complainant then expressed to Rosas that she had a pain in her stomach and wanted to drink tea to help relieve it. (A309). While the complainant was in the bathroom for about 20 minutes dealing with stomach pains, Rosas was trying to resolve a problem with his work van. (A310). Rosas testified that when he returned, the complainant was on the couch wearing only a t-shirt and she made a sexual advance towards him. Rosas admitted that he became aroused and he ejaculated on the complainant but that he never inserted his penis inside the complainant's vagina. (A314). The complainant proceeded to have a cup of hot tea and her and Rosas conversed on the couch prior to Rosas leaving for work. Rosas testified that he was there for approximately an hour and no other sexual contact or assault took place. (A317).

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.

Question Presented

Whether a non-passport foreign identification card and the pedigree contents therein constitutes inadmissible hearsay when it is used by the State to prove the truth of the matter asserted, a necessary element of the charged offenses? The issue was preserved by a timely objection. (A18).

Standard and Scope of Review

This Court reviews a trial court's "rulings on the admission of evidence for an abuse of discretion. An abuse of discretion occurs when a court has exceeded the bounds of reason in view of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice." *Baumann v. State*, 891 A.2d 146, 148 (Del. 2005).

Argument

When Rosas was apprehended, he had two forms of identification. A Mexican driver's license bearing his name, date of birth and second identification bearing another name. (A17, A20). Defense counsel objected on the basis, in part on authentication issues, but in larger part, on hearsay grounds as to the information therein, specifically the date of birth and name on the foreign identification card. (A18). The information 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 and second degree. (A17). The Court overruled the objection and permitted the admission of the identification card and the information therein. (A21). Defense counsel renewed its objection when the State asked to move the identification into evidence. Again, counsel reiterated that the identification was hearsay as it was an assertion asserting truth of the matter asserted. (A38). The Court again overruled the objection finding that the identification was self-authenticating. (A39).

The trial court erred in allowing the State to admit into evidence, over Rosas' objection, the Mexican identification card and the information printed therein. "Delaware Rule of Evidence 801(c) defines hearsay as a 'statement, other than one made by the declarant while testifying at the trial or hearing, offered for the truth of the matter asserted.'" *Sanabria v. State*, 974 A.2d 107,112 (Del. 2009). 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).

In the instant case, the errors complained of affected Rosas' convictions. The State bore the burden of proving that Rosas was the individual identified and had reached his eighteenth birthday as a necessary element of rape first and second degree. The date of birth on the foreign identification card was the functional equivalent of

expressly identifying Rosas' age. The trial court erred and failed to provide a basis in finding that the identification was self-authenticating. Since the information provided by the foreign identification card was the only direct evidence of Rosas' name and age, admission of the ID and its contents cannot be considered harmless beyond a reasonable doubt. Thus, Rosas respectfully submits that the convictions at bar should be reversed.

II. THE EVIDENCE IS INSUFFICIENT AS A MATTER OF LAW TO SUSTAIN ROSAS' CONVICTION FOR BURGLARY FIRST DEGREE.

Question Presented

Whether there was sufficient evidence to sustain a conviction of burglary when the Defendant entered his brother's home and did not have the intent to commit a felony when or before he entered? The Defense preserved this issue by moving for a Motion for Judgement of Acquittal. (A291-292).

Standard and Scope of Review

The Court reviews that Superior Court's denial of a Motion for Judgement of Acquittal *de novo* to determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could find a defendant guilty beyond a reasonable doubt of all the elements of the crime. *Priest v. State*, 879 A.2d 575, 580 (Del. 2005).

Argument

The Defendant was convicted of burglary first degree. The offense is defined under the Delaware Criminal Code in pertinent part: "A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in an occupied dwelling with intent to commit a crime therein." 11 *Del. C.* § 826(a). After the State rested, defense counsel moved for a motion for judgement of acquittal as to burglary in the first degree and possession of burglar's

tools. (A292). Rosas argued that he was lawfully in his brother's house. (A283). The trial Court granted the motion with respect to possession of burglar's tools but denied the motion as to the charge of burglary in the first degree. (A295). (*See* Oral Ruling, attached as Ex. C).

Rosas' submits that the State has failed to present at trial sufficient evidence to prove all the material elements of Burglary in the First Degree as defined by Del. C. tit 11 § 826. For this reason, Rosas' conviction of Burglary in the First Degree violates the Fifth and Fourteenth Amendment of the United States Constitution and the Delaware Constitution Article I, § 3, as such convictions violate Rosas' right to due process of law.

The State has the burden of proving each element of the crime charged beyond a reasonable doubt. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *In re Winship*, 397 U.S. 358, 364 (1970). A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. *Id.*; U.S. Const. Amend. XIV; Const. Art. I, § 3. On appeal, evidence will be found sufficient only if "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 318 (1970).

Rosas' submits that the State failed to present at trial sufficient evidence to prove all the materials element of Burglary in the First degree, specifically that he

remained unlawfully in his brother's residence and formulated the necessary intent before or at the time he entered the dwelling. *Dolan v. State*, 925 A.2d 495, 496 (Del. 2007). The totality of the circumstances presented at trial indicate that Rosas had routinely frequented his brother's residence as many of his family members occupied the property. Moreover, Rosas testified that he entered the property without criminal intent but rather to borrow his brother's work tools. Any criminal *mens rea* was established after encountering the complainant. Even viewing the evidence in the light most favorable to the prosecution fails to establish that Rosas had the intent to commit a crime inside before or at the time he entered the dwelling beyond a reasonable doubt. *Id.* Therefore, the Burglary conviction must 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: January 28, 2023