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Case Number 101,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ANDRE BRYAN,	)	
	)	
Defendant—Below,	)	
Appellant	)	
	)	
v.	)	No. 101, 2025
	)	
	)	
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff—Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S REPLY BRIEF

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I. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING BRYAN'S MOTION FOR RELIEF FROM PREJUDICIAL JOINDER.

The State's Answering Brief takes the position that Bryan should be consigned to plain error review of his claims relating to prejudicial joinder, as he did not object to the form or timing of the trial court's ruling.[1] This Court has repeatedly held that preservation of an appeal from a ruling does not require a motion for reargument.[2]

> Just as a party need not reassert an issue in a motion for reargument in order to preserve it for appeal . . . we cannot realistically expect parties to re-raise arguments in post-trial motions and also present all the possible permutations of those previously rejected arguments. To hold otherwise would only increase the burden on our trial courts.[3]

In *Holden v. State*, the "adjudicative responsibilities" issue was also reviewed for an abuse of discretion in the wake of a trial court's denial of a suppression motion without a substantive ruling, though the opinion cites no further objection from the defense as necessary for that review.[4]

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[1] Answering Brief at 17—18.
[2] *Allen v. Scott*, 257 A.3d 984, 992 (Del. 2021).
[3] *McGuinness v. State*, 312 A.3d 1156, 1191, fn. 212 (Del. 2024) (citation omitted).
[4] *Holden v. State*, 23 A.3d 843, 846 (Del. 2011). *See also DeJesus v. State*, 655 A.2d 1180, 1198—99 (Del. 1995), *superseded by statute on other grounds*.

(a) The trial court failed to provide the specific legal rationale for its denial of the Motion until it issued a Memorandum Opinion two and a half months after trial.

The State argues that the record of this issue must be interpreted in light of the fact that the Motion for Relief from Prejudicial Joinder was filed the Friday before the scheduled trial.[5] Certainly, had the case proceeded directly to trial, Bryan could not fairly argue that the trial court should have been able to immediately publish a written ruling. But that is not the factual scenario presented here. After the parties forecast a three-day trial that would start July 8, the trial was continued for ten days, to July 18. A4—5; A29. While the "time burdens on our trial courts"[6] are quite real, it is nonetheless "well settled that 'the trial court has discretion to resolve scheduling issues and to control its own docket.'"[7] The issue here is one of discretion, not impossibility. A two-and-a-half-month delay in the written ruling is not supported by the facts of Bryan's case, nor by any authority set forth by the State.

The State focuses its analysis heavily upon the trial court's statements deciding the Motion for Relief from Prejudicial Joinder from the bench.[8] This

[5] Answering Brief at 20—21.
[6] *Holden* at 846—47 (citations omitted).
[7] *Coleman v. PricewaterhouseCoopers, LLC*, 902 A.2d 1102, 1107 (Del. 2006) (quoting *Valentine v. Mark*, 873 A.2d 1099 (Del.2005) (Table)).
[8] Answering Brief at 10, 19—21.

approach sweeps aside the relevance of the trial court's written Memorandum, explaining its reasoning on October 9, 2024. A288—97.

When a bench ruling asserts that its substance will be incorporated in a written ruling, which is then issued two-and-a-half months later, how is counsel to engage with that subsequent written ruling? With no basis to claim any sort of post hoc amendment of the ruling has occurred, it would be professionally inappropriate to treat the written ruling as anything other than part and parcel of the trial court's reasoning that existed on the date that the oral ruling was announced by the trial court. This necessary framework is further supported by the opinion's contextual references to the trial as having not yet occurred. A289; A297.

Minnesota courts confronted the inherent dilemmas in a similar situation described in *State v. Palmer*, in which the temporal and substantive disconnect between an oral ruling and its subsequent written form was examined, sympathetically, with a view of its impact on the prosecutors who appealed:

> A ruling from the bench may provide enough information to allow the prosecution to determine whether it can, and should, appeal. But bench rulings often lack the fuller explanation of the court's reasoning that is helpful for appellate review and therefore helpful also to the prosecution in deciding whether to appeal.[9]

[9] *State v. Palmer*, 749 N.W.2d 830, 833 (Minn. Ct. App. 2008) (citations omitted).

The *Palmer* opinion followed that logic to its conclusion and decided that in such a scenario, the bench ruling alone did not constitute notice of the ruling, and so the written ruling triggered the relevant time periods for the filing of an appeal.[10]

The final written ruling must be treated as the trial court's reasoning. Endorsing a valid distinction and rendering the two rulings as independent of one another would create a potentially disastrous lack of clarity and fairness in Delaware jurisprudence. Attorneys would be forced to account both for the record as it exists and the record as it might exist, out of view.

This Court should reject constructing an analytical framework that does not accurately describe reality. At the time the defense motion was denied, the trial court said it would publish its ruling. A60. The trial court's reasoning is in the published ruling. A288—97. Therefore, analysis of the reasoning should focus on the published order. Bryan has already raised the due process arguments focused upon the delay of the ruling in his Opening Brief,[11] and thus will turn to the substance of the reasoning behind the ruling.

[10] *Palmer* at 833.
[11] Opening Brief at 16—18.

(b) The trial court's ruling failed to properly balance the relevant circumstances and relied upon distinguishable precedent.

The State's Answering Brief quoted *Wood v. State* at length to advance its arguments that severance of the charges between complaining witnesses was inappropriate because there was substantial *modus operandi* evidence linking all of the charges.[12] Nonetheless, that analysis actually demonstrates that *Wood* is highly distinguishable. The charged conduct against each victim in *Wood* occurred during overlapping time periods and cumulated to hundreds (or thousands) of individual acts of sexual abuse.[13] As to *modus operandi*, Wood also had a far more distinctive pattern: (1) similarly-aged victims; (2) an initial ruse; (3) use of a black blindfold on each victim; (4) displaying pornography of precise sex acts he sought; (5) use of threats to silence his victims.[14]

The State claims the following constitute *modus operandi* for Bryan: (1) similarly aged victims; (2) close relationship with victims; (3) calling the victims into the guestroom where the abuse occurred; (4) groping the chest and genitals of the victims.[15] These are, comparatively, less distinctive and thus of low probative value in comparison to *Wood*. Bryan's close relationship with the victims should not

[12] Answering Brief at 25—27 (citing *Wood v. State*, 956 A.2d 1228 (Del. 2008)).
[13] *Wood* at 1229—30.
[14] *Wood* at 1232.
[15] Answering Brief at 27.

even be considered as *modus operandi*, as close domestic relations existed in *Wood* yet were not cited in its *modus operandi* analysis.[16] Moreover, the groping conduct alleged was not some unique *modus operandi*, but rather describing basic elements of the charges.

Prong 3 of *Getz*[17] was placed at issue by the State, when during the pretrial hearing, before turning to the defense motion, the prosecutor noted that "so with regard to the 3507 witness, there would possibly be a world where if she cannot recall and whenever the State can't do 3507 some charges would go away, not all charges, that would affect the minimum mandatory time he is facing." A55. Though the State challenges the relevance of this issue due to testimony later presented at trial,[18] at the time the motion was decided, a necessary witness's potentially faltering recall was pertinent to the analysis.

The embarrassment suffered by Bryan in challenging the inconsistent recall of a witness,[19] though not foreseen at the time, was not put forth as an independent claim of error, but rather was raised in order to demonstrate one dimension of the prejudice that Bryan suffered as a result of the decision.

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[16] *Wood* at 1229—30, 1232.
[17] *Getz v. State,* 538 A.2d 726 (Del. 1988).
[18] Answering Brief at 34.
[19] Opening Brief at 20—21.

II. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ORDERED BRYAN TO REFRAIN FROM USING ENGLISH IN HIS TESTIMONY AND ONLY PERMITTED HIM TO TESTIFY IN HIS OWN DEFENSE THROUGH THE INTERPRETER.

The State's Answering Brief claims that the issue was not preserved due to lack of an objection from Bryan.[20] That claim misconstrues Bryan's obligations under the circumstances. The transcript reflects, in context, that the State sought a sidebar in order to object to Bryan's use of English:

> Q. *Mr. Andre, are you from Cuba?*
> A. *Yes, I am (in English).*
> Q. *Do you have actual family here in the United States?*
> A. *I have some family but not too many (in English).*
>
> MS. WARNER: *Your Honor, may we approach?*
>
> (The following sidebar conference was held.)
>
> THE COURT: *It's the fact he's answering questions. I was going to address that.*
>
> MS. WARNER: *I'm sorry, Your Honor. The State was simply -- he's got the interpreter. I think the rules are that he has to use the interpreter. He can't converse back and forth in English. Sorry, Your Honor.*
>
> (The sidebar conference concluded.)
>
> THE COURT: *Mr. Andre's answers have to be through the interpreter.*
>
> THE WITNESS: *Some words that I have said or have not said I also have to say them in English so that they can understand, so they can understand as well.*
>
> THE COURT: *We have to hear them through the interpreter.* A211—12.

[20] Answering Brief at 33.

The trial court clearly anticipated the State's objection and immediately made the ruling that the State had sought. A211—12. For his part, Bryan quickly responded and told the trial court why he was answering in English, reflecting his intentional desire to communicate with the jury in English. A212. Bryan's explanation did not sway the trial court. A212.

Under D.R.E. 103(b), *Not Needing to Renew an Objection or Offer of Proof*, further objection was not necessary: "[o]nce the court rules definitively on the record -- either before or at trial -- a party need not renew an objection or offer of proof to preserve a claim of error for appeal."[21]

If there was, *arguendo*, any deficiency in how the issue was addressed, it lay in the trial court's quick ruling that did not provide sufficient opportunity for both sides to address the issue before deciding it. "If a party makes the tactical decision to object, the trial judge must hear from both sides outside the jury's hearing and definitively rule thereby preserving both the objection and the basis for the ruling on the record."[22]

Hanging over both the courtroom record and the State's Answering Brief is the deeply troubling lack of actual authority for an inflexible rule on compelled use of an interpreter. While it seems that the trial court was operating under a good-faith

[21] D.R.E. 103(b).
[22] *Alexander v. Cahill*, 829 A.2d 117, 129 (Del. 2003).

belief that such a rule existed, cited authority on the topic is absent. In the pivotal moments of his trial, Bryan's attempt to plead his case to the jury was stymied by the inflexible application of nonexistent authority. "Where . . . the court in reaching its conclusion overrides or misapplies the law, or the judgment exercised is manifestly unreasonable, an appellate court will not hesitate to reverse."[23] Sudden application of a rule that does not exist is a fundamentally "arbitrary action,"[24] and for Bryan, it could not have come at a worse time.

In lieu of controlling authority, the State cites[25] a discussion at Bryan's Final Case Review on June 10, 2024, during which an interpreter addressed the bench in reference to Bryan's use of English:

> (The defendant exits the courtroom.)
>
> THE COURT: *I don't know if that satisfies a formal request for an interpreter, but I hope we get her time blocked.*
>
> THE INTERPRETER: *Your Honor, the interpreter was asking because Mr. Andre continued to speak in English.*[26]
>
> THE COURT: *Yes.*
>
> THE INTERPRETER: *And if he goes to trial with interpreters, he's going to have to be instructed that he*

[23] *Pitts v. White*, 109 A.2d 786, 788 (Del. 1954).
[24] *Id.*
[25] Answering Brief at 34.
[26] The interpreter's reference to having asked a question earlier apparently pertains to "Your Honor, the interpreter would like to inquire if there's going to be need for an interpreter in the trial and how long the trial is going to last." A28. The prosecutor responded, predicting a three-day trial. A28.

> *cannot speak in English. He has to speak everything in Spanish.*
>
> THE COURT: *He has to speak in Spanish. It's either all or nothing; is that right?*
>
> THE INTERPRETER: *Pardon?*
>
> THE COURT: *It's all or nothing?*
>
> THE INTERPRETER: *It's all or nothing.*
>
> THE COURT: *Well* --
>
> THE INTERPRETER: *And Mr. Andre just indicated to me "I want to speak in both languages." And it's not going to happen. The interpreter will ask to be recused.* A29—30.

The interpreter at Final Case Review did not cite to a specific policy undergirding the "all or nothing" stance on interpreter services. Moreover, the interpreter claimed that further use of English by Bryan would trigger a request from the trial interpreter to be recused. A30. However, the trial interpreter never requested recusal prior to the State's objection, despite Bryan's use of English. A209—12.

Nor did the trial court even prompt Bryan to make an "all or nothing" choice on the use of the interpreter when the issue arose at trial. While Delaware Superior Court Criminal Rule 28[27] provides little guidance on interpreter usage and is thus rarely addressed in caselaw, multiple federal circuits have placed the onus on trial courts to address the need for interpreters with defendants in order to develop the

[27] Del. Super. Ct. Crim. R. 28.

necessary record for or against the decision to involve an interpreter. As the First Circuit held in *United States v. Carrion*:

> It would be a fruitless and frustrating exercise for the appellate court to have to infer language difficulty from every faltering, repetitious bit of testimony in the record. But precisely because the trial court is entrusted with discretion, it should make unmistakably clear to a defendant who may have a language difficulty that he has a right to a court-appointed interpreter if the court determines that one is needed, and, whenever put on notice that there may be some significant language difficulty, the court should make such a determination of need.[28]

The Ninth Circuit also dealt with a trial court's abrupt mid-testimony ruling on an interpreter that foreclosed necessary development of the record in *United States v. Mayans*,[29] holding that:

> The trial court was certainly entitled -- indeed, required -- to make a determination of appellant's linguistic abilities. Once properly made, that determination would have been entitled to considerable deference. The method the court employed, however, placed that determination, and therefore prematurely placed appellant, in a forum fraught with risk.[30]

[28] *United States v. Carrion*, 488 F.2d 12, 15 (1st Cir. 1973).
[29] *United States v. Mayans*, 17 F.3d 1174, 1177—81 (9th Cir. 1994).
[30] *Id.* at 1180.

The State asks the Court to engage in the "fruitless and frustrating exercise" characterized in *Carrion*,[31] by quibbling with his "fair at best" syntax and grammar during his Final Case Review and claiming purported unintelligibility.[32] It does not cite authority by which grammar and syntax that are "fair at best" should have been disqualifying for English-language testimony safeguarded by Bryan's Fifth Amendment rights.[33] Though the State claims that Bryan should somehow have demonstrated what would have been said differently in English had the ruling on the interpreter not shifted his testimony, such an exercise would be beyond "fruitless and frustrating," it would be impossible. The State's argument also fails to heed D.R.E. 103(b), as it would essentially demand an additional offer of proof. *Mayans* confronted a similar scenario and reaches the conclusion that it is a trial court's responsibility to explore the defendant's language proficiency to develop the necessary record.[34] Given that the abrupt decision on the interpreter interfered with

[31] *Carrion* at 15.
[32] Answering Brief at 8, 35. The State cites three instances of "(unintelligible)" in the transcript, none of which occurred during his English-language trial testimony. A306 and A307 appear to correspond to Bryan rushing through lengthy sentencing comments in English that did not prompt any interruption or clarification from the Court. A20 appears to relate to unintelligible identification of a person, perhaps due to pronunciation of a name, and again, interruption or clarification was not sought.
[33] U.S. Const. amend. V.
[34] *Mayans* at 1180.

his Fifth Amendment rights, the defendant in *Mayans* received a new trial on remand.[35]

The State also addresses that the Opening Brief's discussion of protective *voir dire* and jury instructions to be given when interpreters are use, attempting to frame the argument as an independent claim of error that should be rejected through plain-error analysis.[36] The State's contention fundamentally misapprehends the relevance of the *voir dire* and jury instructions to Bryan's claim. The erroneous failure to appropriately safeguard the jury against language-related bias is a circumstance with strong bearing upon the decision to force Bryan to use an interpreter, as it eliminated requisite protective factors that should have been present and would have limited any potential harm. These errors and their consequences are subsumed within the trial court's erroneous decision to compel interpreter usage without having ever explored the issue in colloquy with Bryan.

[35] *Mayans* at 1181.
[36] Answering Brief at 36 (citing Opening Brief at 24—26).

CONCLUSION

For the reasons and upon the authorities cited herein, the judgment of the Superior Court should be reversed.

Respectfully submitted,

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