



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES N. HALL,)
)
 Defendant-Below,)
 Appellant,) No. 171, 2012
)
 v.)
)
 STATE OF DELAWARE,)
)
 Plaintiff-Below,)
 Appellee.)

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

STATE'S ANSWERING BRIEF

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NATURE AND STAGE OF THE PROCEEDINGS

The appellant, James Nathaniel Hall, was charged by indictment with attempted first degree robbery, three counts of possession of a firearm during the commission of a felony, first degree reckless endangering, two counts of possession of a firearm by a person prohibited, criminal mischief, first degree assault, and carrying a concealed deadly weapon in January 2011.¹ After a two-day trial before the Superior Court in early-August 2011, Hall was convicted of first degree assault and possession of a deadly weapon during the commission of a felony.² The trial court also convicted Hall of two possession of a deadly weapon by a person prohibited charges.³ The jury acquitted Hall of attempted first degree robbery and the related possession of a firearm during the commission of a felony charge. The Superior Court entered a judgment of acquittal on the remaining charges.⁴

After trial, Hall moved the Superior Court for a judgment of acquittal on all convictions. The Superior Court denied that motion on November 17, 2011,⁵ and sentenced Hall to an aggregate of 20 years of incarceration for all offenses.⁶ Hall timely appealed. This is the State's answering brief.

¹ A1, D.I. 1; A9-13.

² See *State v. Hall*, Del. Super., ID No. 1011006903A, Brady, J., at 2 (Nov. 17, 2011) (Opinion and Order) (Ex. A).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See *State v. Hall*, Del. Super., ID No. 1011006903A, Brady, J. (May 21, 2012) (Sentencing Order) (Ex. B to Op. brf.); See *State v. Hall*,

SUMMARY OF THE ARGUMENTS

1. Hall's sole claim on appeal is DENIED. It was entirely proper to elicit testimony that he was known by the nickname "Nasty Nate" because such testimony was necessary to identify Hall as the perpetrator of these offenses.

STATEMENT OF FACTS

As set forth by the Superior Court in its opinion denying Hall's motion for judgment of acquittal, the facts presented at trial were these:

On November 6, 2010 ("November 6"), Tracy Gee saw someone on the porch of her residence at 1228 West 4th Street, who she knew as "Nasty Nate." Ms. Gee identified the Defendant, James Hall, as "Nasty Nate" in Court. Ms. Gee testified she heard two gun shots and believed they came from her front porch.

Charlotte Bush, a guest at Ms. Gee's residence, testified she walked out of the front door onto the porch and saw to her right, a black male holding a handgun and wearing a "hoodie" concealing part of his face. Ms. Bush testified she told her son, Alex Bush ("Bush"), there was a man on the porch with a gun. Ms. Bush further testified Bush went out onto the porch and was involved in a "tussle" with the black male for five to ten minutes, after which she heard one gunshot from the front porch. Ms. Bush testified she saw a bullet ricochet off the porch and into the street.

Bush testified that, while walking his mother and a child out of Ms. Gee's residence, he encountered a black male on the porch with a large revolver that was silver in color, and the man told him to "run it," which is a slang phrase used to demand property in a robbery or attempted robbery. Bush testified the man was wearing a hoodie that did not cover his face. Bush testified that he looked directly at the [man's] face in good lighting conditions and tussled with him for three to four minutes before getting the upper hand, shoving the man back on his heels, and running off the attached porch at 1230 West 4th Street. Bush testified he saw and heard a gunshot from the porch of Ms. Gee's residence at 1228 West 4th Street. In Court, Bush identified [Hall] as the person on the porch.

Bush testified that, subsequently, on November 8, 2010 ("November 8"), on Van Buren Street, at its intersection with Pleasant Street, he encountered the same person he had seen on the porch, with the same large silver revolver. Bush testified that the person was standing under a street light, and Bush could see his face. The person pulled the gun out of his waistband and fired one shot, which hit Bush in his left ankle. In Court, Bush identified [Hall] as the person standing on Van Buren Street with the large silver revolver. Bush stated he was "125%" sure it was [Hall],

and that individual was the same person who tried to rob him on November 6.⁷

⁷ *Hall*, ID No. 1011006903A, at 3-4.

**I. IT WAS NOT IMPROPER FOR THE STATE TO REFER TO HALL AS
"NASTY NATE."**

QUESTION PRESENTED

Was it improper for the State to elicit testimony that Hall was known by the nickname "Nasty Nate" when the primary issue at trial was the identity of the perpetrator?

STANDARD AND SCOPE OF REVIEW

Discretionary rulings on the admissibility of testimony are reviewed for an abuse of discretion.⁸

MERITS

As his sole claim on appeal, Hall argues that the trial court erred by ruling that the State could elicit testimony that he was known as "Nasty Nate." Hall argued both below and here that the use of his nickname unfairly suggested that he possessed a criminal disposition. But because the sole issue at trial was the identity of the perpetrator of the charged crimes; the nickname did not necessarily suggest that Hall had a propensity for criminal conduct; and several witnesses knew Hall as "Nasty Nate," the trial court did not err by permitting the State to elicit testimony regarding that nickname.

At trial, the prosecutor informed the Court that there would be "multiple references" to Hall's nickname, "Nasty Nate."⁹ The State argued that the nickname was relevant because many of the witnesses knew Hall as "Nasty Nate" and identified him as such to police. In

⁸ See *Smith v. State*, 913 A.2d 1197, 1232 (Del. 2006).

⁹ A14.

response, defense counsel argued that the Superior Court should require the State to follow the course of action suggested by this Court in *Taylor v. State*.¹⁰ The Superior Court then ordered the State to have its witnesses refer to Hall as "Nate."¹¹ But the court left open the question for later argument.¹²

After taking a recess, the parties reconvened to discuss the outstanding evidentiary issues. The prosecutor argued that because some of the witnesses knew Hall as "Nasty Nate," testimony identifying Hall as such was relevant. The prosecutor further argued that, unlike Allen Taylor's nickname - "Murder" - Hall's nickname was not inherently prejudicial.¹³ The prosecutor also suggested that the Court give a limiting instruction similar to that suggested by this Court in *Taylor*.¹⁴

In response, defense counsel again argued that the Superior Court should require the State to follow the path suggested by *Taylor*. Hall did not, however, request that the jury be given a limiting instruction similar to that given in *Taylor* at the close of trial. Though Hall did not cite a specific Rule in his objection, it appears that he argued that the use of "Nasty" was barred by Delaware Rules of

¹⁰ A14. See *Taylor v. State*, 23 A.2d 851, 857 (Del. 2001) ("Those witnesses who only knew Taylor by his nickname could have been asked, in court, whether they recognized the defendant, without asking what name they knew him by. The questioning then could have proceeded using Taylor's real name.").

¹¹ A14.

¹² A15.

¹³ A17.

¹⁴ A17.

Evidence 404(a)¹⁵ and 403.¹⁶ The trial court ultimately concluded that Hall could be identified as “Nasty Nate” because identification was the primary issue in the trial, the nickname was not unduly prejudicial, and because to hold otherwise would permit Hall to make the misleading argument that “Nate” is a common nickname.¹⁷

Now on appeal, Hall argues that his nickname was “not relevant to any proper purpose” and unfairly suggests that he possessed a “propensity for criminal conduct.”¹⁸ The only rule cited by Hall is Rule 404(a), which precludes the State from offering “[e]vidence of a person’s character or a trait of his character [] for the purpose of proving action in conformity therewith on a particular occasion.”¹⁹ Hall has offered no argument on Rule 401 or 403 grounds. Consequently, to the extent that Hall raised an objection to the State’s use of his nickname on grounds other than Rule 404(a), this Court must deem those objections waived.²⁰

¹⁵ A17.

¹⁶ A18. Compare A18 (“Just because the defendant says it in a phone call doesn’t mean it’s not unduly prejudicial and that the probative value doesn’t outweigh that prejudice.”) to DEL. UNIF. R. EVID. 403 (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence.”).

¹⁷ A18.

¹⁸ Op. brf. at 10. See also Op. brf. at 11.

¹⁹ DEL. UNIF. R. EVID. 404(a).

²⁰ *Somerville v. State*, 703 A.2d 629, 631 (Del. 1997); *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

In support of his argument that use of his nickname requires reversal, Hall cites the decision of the Seventh Circuit in *United States v. Williams*,²¹ the Second Circuit's decision in *United States v. Farmer*,²² the Fourth Circuit's decision in *United States v. Clark*,²³ and this Court's decision in *Taylor*. None of those opinions, however, offer any aid to Hall.

A. THAT HALL'S NICKNAME WAS "NASTY NATE" WAS RELEVANT TO PROVE THAT HE WAS THE PERPETRATOR OF THESE CRIMES.

Numerous courts have affirmed that evidence of a defendant's nickname is relevant to prove identity.²⁴ "When identity is disputed, the state must negate any reasonable probability of misidentification in order to satisfy its burden to establish every element of the crime charged beyond a reasonable doubt."²⁵ This is true even when the nickname is far more incriminating than "Nasty."²⁶

²¹ 739 F.2d 297 (7th Cir. 1984).

²² 583 F.3d 131 (2d Cir. 2009).

²³ 541 F.2d 1016 (4th Cir. 1976).

²⁴ See, e.g., *People of California v. Lee*, 51 Cal. 4th 620, 670-71 (Cal. 2011) (Nickname "Point Blank" relevant to prove defendant's identity where victim was shot repeatedly in the face at close range); *Com. of Massachusetts v. Martinez*, 940 N.E.2d 422, 434-35 (Mass. 2011) (Nickname "Pinocchio" relevant to prove identity where witnesses knew defendant by nickname); *Louisiana v. Edwards*, 750 So.2d 893, 902-03 (La. 1999) (Nickname "Gunslinger" relevant to prove identity where witnesses knew defendant by nickname).

²⁵ *Edwards*, 750 So.2d at 902. See also *Connecticut v. Smith*, 907 A.2d 73, 83 (Conn. 2006) ("[I]n any criminal prosecution, the state bears the burden of proving beyond a reasonable doubt the defendant's identity as one of the perpetrators of the crime charged.").

²⁶ *Supra* n. 24.

As both parties repeatedly affirmed below, the primary issue at trial was the identity of the perpetrator.²⁷ Both Ms. Gee and Mr. Bush testified that they knew Hall only as "Nasty Nate."²⁸ At trial, Alex Bush testified that, prior to the incident on November 6th, he did not know Hall.²⁹ It was only during the November 6th attempted robbery that Mr. Bush learned Hall's nickname - "Nasty Nate."³⁰ And it was that name that Mr. Bush gave to police.³¹ Hall's defense was that it was not he who had shot Mr. Bush. On that basis alone, Hall's nickname was relevant.

But Hall now argues that "[t]here was never a dispute that 'Nate' and 'Nasty Nate' referred to the same person."³² That was certainly not evident at trial. Defense counsel's closing argument focused nearly exclusively on the question of whether the State had proven that Hall was the perpetrator of these crimes.³³ As recognized by the trial court, to not permit the State to use the adjective "Nasty" would open the door for the defense to argue that "Nate" is a common nickname. Thus, it was necessary to prove that Hall was "Nasty Nate."

²⁷ See, e.g., A14, 17.

²⁸ A36.

²⁹ A43.

³⁰ Both Mr. Bush and Ms. Gee testified that children yelled either "Nasty Nate, Nasty Nate" or "Nate, Nate" during the November 6th incident. See A28, 40, 44. In both cases, however, that testimony was stricken and a cautionary instruction given. A29, 51.

³¹ A50, 61.

³² Op. brf. at 18.

³³ See B-1-3.

B. HALL'S NICKNAME "NASTY" DOES NOT NECESSARILY IMPLY A CRIMINAL DISPOSITION.

"In assessing the propriety of using a defendant's nickname, other courts have also looked to whether the name was 'necessarily suggestive of a criminal disposition.'"³⁴ Unlike the nicknames in *Taylor* and *Farmer* (both "Murder" in cases where the defendant was on trial for murder), Hall's nickname "Nasty" does not necessarily imply that he possesses a criminal disposition. Certainly there was no suggestion at trial (as Hall apparently suggests here) that Hall adopted his moniker in tribute to an obscure character from the unsung 1998 film "Half Baked."³⁵ That alone should end the enquiry.³⁶

C. THE STATE DID NOT "MISUSE" HALL'S NICKNAME.

Even if Hall's nickname had implied a predisposition to criminality, the error is not in using it to prove identity, but in misusing it. The *Farmer* court made clear that the error in that case was not eliciting Farmer's nickname from witnesses who knew him by that name,³⁷ but rather the government's extensive use of the nickname "Murder" "with a lot of arch emphasis and many facetious asides" in a

³⁴ See *Farmer*, 583 F.3d at 145. (citing cases).

³⁵ See Op. brf. at 16 n. 13. Indeed, there's no evidence that anyone other than present defense counsel made that particular connection. "Half Baked" was the 95th highest-grossing film of 1998. <http://boxofficemojo.com/movies/?id=halfbaked.htm> (last viewed September 14, 2012).

³⁶ See, e.g., *United States v. Roberson*, 124 Fed. Appx. 860, 862 (5th Cir. 2005) (nickname "Loco" not necessarily suggestive of criminal disposition); *United States v. Dean*, 59 F.3d 1479, 1492 (5th Cir. 1995) (holding that nickname "Crazy K" not necessarily suggestive of a criminal disposition.).

³⁷ 583 F.3d at 146 ("In this case, it was error for the district court to permit the government to elicit testimony of Farmer's nickname (except for references by witnesses who know him by that name)").

case where the identity of the perpetrator was not at issue.³⁸ The court in *Clark* disfavored the use of the nickname "Fast Eddie" not because it was irrelevant, but because "the prosecution did not use the alias as part of its proof connecting the identity of the defendant to the robbery."³⁹ Unlike the circumstances in *Farmer* and *Clark*, however, the prosecutor here only used Hall's nickname in an attempt to identify him. When Mr. Bush identified his assailant as "Nasty Nate," it was certainly relevant to show that others - specifically Ms. Gee - knew him by that name as well. There were no extraneous references to "Nasty" or arguments implying that the defendant had a "nasty" disposition.

D. EVEN IF IMPROPER, ANY ERROR WAS HARMLESS.

But even if it was improper for the State to use Hall's nickname, any error arising therefrom was harmless. Harmless error analysis is a "case-specific, fact-intensive exercise."⁴⁰ In this instance, there is simply no evidence that use of the Hall's nickname - even if improper - in any way "caused the jury to ignore its role as fact-finder and final arbiter of witness credibility [or] brought into doubt the integrity of the trial as a whole."⁴¹ Hall was acquitted by the jury of all charges related to the November 6th incident. In court, Mr. Bush identified "Nasty Nate" - Hall - as his assailant unequivocally. And, according to Hall himself, there is no question

³⁸ *Id.* at 144-46.

³⁹ *Clark*, 541 F.2d at 1018.

⁴⁰ *Czech v. State*, 945 A.2d 1088, 1098 (Del. 2008); *Trump v. State*, 753 A.2d 963, 970 (Del. 2000).

⁴¹ *Allen v. State*, 970 A.2d 203, 220 n. 76 (Del. 2009).

that he is "Nasty Nate." Thus, even if this Court determines that it was improper for the State to elicit testimony that Hall's nickname was "Nasty Nate," it should find that error harmless.

CONCLUSION

For the foregoing reasons, the judgment of the Superior Court should be affirmed.

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