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Case Number 500,2013

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHRISTINA OZDEMIR,	)	
	)	
	)	
Appellant	)	
	)	
v.	)	**No. 500, 2013**
	)	
	)	
	)	
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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TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

I. NOT ONLY DID THE TRIAL COURT ABUSE ITS DISCRETION, IT VIOLATED OZDEMIR'S RIGHTS TO DUE PROCESS AND CONFRONTATION WHEN IT ALLOWED THE STATE TO PRESENT TO THE JURY A PLETHORA OF INADMISSBLE HEARSAY AS WELL AS IRRELEVANT AND HIGHLY INFLAMMATORY COMMENTS MADE BY A FAMILY COURT JUDGE.

The State fails to provide ***any*** law in support of a claim that the Family Court judge's findings of fact and conclusions of law, rather than just the orders resulting therefrom, were admissible. It baldly claims that this evidence was relevant. Resp.Br. at 13. However, the State fails to explain how the findings of fact and conclusions of law were any more probative than just the resulting orders. Instead, it simply restates the trial court's ruling and says it was correct. Resp.Br. at 13.

Here, the State never contests that: the findings of fact and conclusions of law were replete with double hearsay; the Family Court judge bolstered the credibility of the hearsay statements; introduction of the findings of fact and conclusions of law violated the Confrontation clause; the findings of fact and conclusions of law were highly inflammatory; the findings of fact and conclusions of law allowed a judge to unfairly influence the jury; and the jury was never informed that the judge's findings were made under a "clear and convincing" standard rather than a standard of "beyond reasonable doubt." Thus, the State's failure to "cite *any* authority

in support of a legal argument [that the findings of fact and conclusions of law were admissible] constitutes a waiver of the issue on appeal." *Flamer v. State*, 953 A.2d 130, 134 (Del. 2008).

The State chose to focus its response on an erroneous argument that introduction of the inadmissible evidence was harmless beyond reasonable doubt. Resp.Br. at 13. It claims that, in addition to the inadmissible evidence, the State presented overwhelming evidence of Ozdemir's guilt. Resp.Br. at 15. However, as the excerpts in the State's brief illustrate, a significant portion of that evidence came from Riley's testimony. Resp.Br. at 15-16. It is no secret that Riley and Ozdemir had a contentious relationship and that Ozdemir had claimed he physically abused her. Thus, Riley's testimony did not come without any credibility issues.

To the extent the State presented evidence of several filings and hearings, that evidence was not in dispute and actually supported Ozdemir's argument that she relied on a genuine jurisdictional dispute in the courts when she retained custody of her children. On the other hand, the judge's finding of fact that she was essentially "playing the system" went directly to the core of Ozdemir's defense.

Finally, that a plethora of facts found by a judge under a "clear and convincing" standard of proof was given to the jury to consider in a criminal

case without informing the jury of the standard upon which the findings were made must be found to be "so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process." *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986). It amounted to a material defect which is "apparent on the face of the record; which [is] basic, serious and fundamental in [its] character, and which clearly deprive[d] an accused of a substantial right, [and] which clearly show[s] manifest injustice." *Id.*

CONCLUSION

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

\s\ Nicole M. Walker
Nicole M. Walker, Esquire

DATE: February 24, 2014