IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID RAMIREZ,	§	
	§	No. 52, 2011
Defendant Below,	§	
Appellant,	§	
	§	Court Below: Superior Court
v.	§	of the State of Delaware,
	§	in and for New Castle County
STATE OF DELAWARE,	§	
	§	Cr. ID No. 1006001040
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 13, 2011
Decided: August 25, 2011

Before **STEELE,** Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 25th day of August, 2011, on consideration of the briefs of the parties, it appears to the Court that:

1) David Ramirez appeals from his convictions, following a jury trial, of criminal mischief and first degree criminal trespass. Ramirez argues that the trial court erred by failing to give a limiting instruction concerning hearsay statements contained in his taped police interrogation. His claim has merit, and requires reversal.

2) One evening during the summer of 2010, as Elaine Diehlmann was getting ready for bed, she noticed a dark object outside her screen door. Two men then

entered her house through the screen door. They were dressed in black and wore black gloves and masks. One of the men held a stick at Diehlmann, and the larger man said, "Your son has something of mine." Diehlmann's 16 year old son, Chase, was in his bedroom when the larger man burst into the room and said, "Where's it at?" Chase said, "D?" and the man again said, "Where's it at?" Chase asked, "Why are you doing this?" The man then threw Chase's television on the floor, opened the drawers of Chase's furniture, and threw the contents on the floor. The two men then fled.

3) New Castle County Police Officers responded to Diehlmann's 911 call and learned that Chase believed the taller man to be Ramirez. Officer Annette Irons found Ramirez in his apartment, which was across the street from the Diehlmann residence. She took him into custody and later interviewed him at the police station. Ramirez repeatedly denied any involvement in the events at the Diehlmann house.

4) Ramirez was charged with second degree burglary, attempted robbery second degree, wearing a disguise during the commission of a felony, second degree conspiracy, and criminal mischief. The State *nolle prossed* the conspiracy charge, and the jury found Ramirez not guilty of the robbery and wearing a disguise charges. The jury found Ramirez guilty of first degree criminal trespass (a lesser included offense of burglary second degree) and criminal mischief.

5) Ramirez argues that the trial court erred when it refused his request for a limiting instruction with respect to his videotaped statement to the police. During the police interview, Irons used a familiar "technique" to elicit information from the suspect. She lied. For example, Irons told Ramirez that the police had camera footage of him from parking lot security cameras; that the police had another suspect in custody who had implicated Ramirez; and that the police had Ramirez's DNA from an article of clothing collected near the scene of the crime. None of those statements was true. In addition, she repeatedly told him that both his mother and brother had told the police that Ramirez was not at home at the time of the offense. It is not clear from this record whether those statements were true or not, but the State did not call either the mother or brother as witnesses.

6) After the tape was played for the jury, the court called a sidebar to discuss a concern. The court noted that Irons referred to a prior felony conviction when Ramirez was a juvenile. The court asked whether Ramirez was making a strategic decision not to redact that portion of the tape, and whether he wanted the court to give a cautionary instruction. Ramirez said yes as to both questions, and explained his thinking. Ramirez then asked the court to give a limiting instruction with respect to Irons' hearsay statements about what Ramirez's mother and brother had said about Ramirez's whereabouts. The court agreed that the statements were inadmissible

hearsay, but denied the request. The court stated that Ramirez could argue that the hearsay statements were like the other untrue statements about DNA evidence and video surveillance.

7) It is settled law that police "narrative" during an interview, including hearsay statements about what the interviewer knows from other sources, is not admissible and should be redacted before a taped interview is played for the jury.[1] Where, as here, such third-party statements are admitted into evidence, the trial court must give a limiting instruction to the jury.[2]

8) It appears that the trial court refused to give a limiting instruction for two reasons. First, Ramirez had stipulated that the tape could be admitted into evidence, knowing that it contained inadmissible hearsay. Second, the court seemed to equate Irons' false statements about having DNA evidence and video surveillance tapes, with what may have been true statements by family members about when Ramirez returned to the apartment.

9) The fact that Ramirez agreed to admit the tape does not preclude appropriate limitations on its use. Indeed, the trial court recognized that the reference in the tape to a prior conviction warranted a limiting instruction. The hearsay statements, if

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[1] *Hassan-El v. State,* 911 A.2d 385, 398 (Del. 2006).

[2] *See*: *Sanabria v. State*, 974 A.2d 107, 116 (Del. 2009).

believed, were almost as prejudicial as the prior conviction. According to Irons, Ramirez's mother and brother both contradicted him, saying that Ramirez was "in and out" of the apartment during the time the crime took place. The State may have decided that it was better to get this information to the jury through Irons' testimony and thereby avoid having to deal with reluctant family witnesses. But hearsay statements cannot be considered for their truth except in limited circumstances not present here.[3]

10) Even assuming the State was not trying to establish the truth of the family members' statements through Irons' hearsay, the jury did not know that. As far as the jury knew, two family members told the police that Ramirez was lying when he said he was at home. Because the hearsay statements presented a "grave potential for misunderstanding,"[4] the trial court should have given a limiting instruction to explain that Irons' statements could not be considered as evidence.

10) This was a close case. The State presented no physical evidence linking Ramirez to the crimes. A K-9 dog tracked a path from the back of Diehlmann's house to the parking lot in front of Ramirez's apartment complex. Along that path, the police found one cotton glove, and said it looked "as if someone just pulled it off and

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[3]*Sanabria v. State*, 974 A.2d at 120.

[4]*Weber v. State*, 547 A.2d 948, 956 (Del. 1988).

threw it down."[5] After searching Ramirez's apartment, the police found a black hoodie under his bed. Chase, who identified Ramirez without seeing his face, admitted on cross-examination that he never spent any time with Ramirez, and that his only conversations with Ramirez consisted of a few words, like "Hi, what's going on?"[6] Faced with this evidence, the jury acquitted Ramirez of all charges except criminal mischief and criminal trespass. Under these circumstances, we cannot be confident that the trial court's error was harmless beyond a reasonable doubt.[7]

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court be, and the same hereby are, REVERSED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[5]Appellant's Appendix, A-17.

[6]Appellant's Appendix, A-14.

[7]*Johnson v. State*, 587 A.2d 444 (Del. 1991).