

ORIGINAL

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

COURT OF APPEALS OF NEW MEXICO
FILED

MAY 01 2017

STATE OF NEW MEXICO,

Plaintiff-Appellee,

vs.

No. 34,873

SHAROSKI JACKSON,

Defendant-Appellant.

**DEFENDANT-APPELLANT'S REPLY BRIEF
ON APPEAL FROM THE SECOND JUDICIAL DISTRICT COURT
THE HONORABLE BRIANA ZAMORA, PRESIDING**

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TRANSCRIPT OF PROCEEDINGS

References to the answer brief are cited as (AB [p#]); References to the brief in chief are cited as (BIC [p#]).

I. Reply Argument: The answer brief is mistaken that Mr. Jackson's claim as to the erroneously admitted exhibit is based on the rule against hearsay.

The answer brief remarks that the brief in chief did not identify how any hearsay claim was preserved challenging the admission of State's exhibit B, (AB 12, *and see* AB 29), and contends that, "[f]or the first time on appeal . . . Defendant now raises a general hearsay objection[.]" (AB 38). This is inaccurate. As noted in the brief in chief, Mr. Jackson's challenge is that the State failed to lay a proper foundation as to who authored the texts. (See BIC 19). But, the State needed to lay a proper foundation, in part, because the texts could constitute hearsay, as they were out of court statements offered against Mr. Jackson. However, Mr. Jackson could not object to hearsay as to this exhibit at trial because, if Mr. Jackson or his co-conspirator authored the texts, the texts could be admitted as admissions by a party opponent. Thus, the issue of hearsay would not be ripe until the foundation was laid as to who authored the texts. And, Defense counsel did object based on a lack of foundation. (See BIC 3-4). Mr. Jackson asserts, therefore, that he stated his lack of foundation objection with sufficient specificity and thus preserved his claim for appeal. *See State v. Varela*, 1999-NMSC-045, ¶ 25, 128 N.M. 454.


And, based on the authority advanced in his brief in chief, *State v. Henry*, 875 N.W.2d 373, 399 (Neb., 2016), *Rodriguez v. State*, 273 P.3d 845, 850 (Nev., 2012), and *Commonwealth v. Koch*, 39 A.3d 996, 1006 (Pa. Super. Ct., 2011), Mr.

Jackson contends that the foundation as to the authors of the texts was not properly established, based on the facts and reasons argued in his brief in chief. (BIC 18).

II. Conclusion and Prayer for Relief

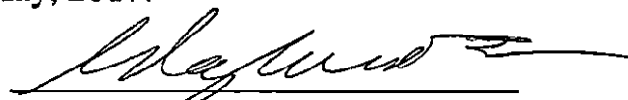
For all other arguments, Mr. Jackson relies on his brief in chief. He prays for reversal of all counts for lack of sufficient evidence and prays that retrial be barred based on his right to be free from double jeopardy. If this Court does not reverse on that basis, he seeks reversal and a new trial on the basis of the district court's errors in admitting improper evidence and in denying Mr. Jackson a new trial based on the basis of newly discovered evidence. He also seeks reversal and a new trial on the count of human trafficking based on an erroneous jury instruction.

Respectfully submitted,
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I hereby certify that a copy of this pleading was served to the Attorney General's Box in the Court of Appeals this 1st day of May, 2017.



New Mexico Public Defender Dept.