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State of Nebraska, appellee, v.
Courtney J. Savage, appellant.
924 N.W.2d 64

Filed March 15, 2019. No. S-17-1166.

SUPPLEMENTAL OPINION

Appeal from the District Court for Lancaster County: Susan I. Strong, Judge. Supplemental opinion: Former opinion modified. Motion for rehearing overruled.

Darik J. Von Loh, of Hernandez Frantz, Von Loh, appellant.

Douglas J. Peterson, Attorney General, and Austin N. Relph for appellee.

Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, Papik, and Freudenberg, JJ.

Per Curiam.

This case is before us on a motion for rehearing filed by the appellant, Courtney J. Savage, concerning our opinion in *State v. Savage*, 301 Neb. 873, 920 N.W.2d 692 (2018). We overrule the motion, but we modify the opinion as follows:

In the subsection "(a) Authentication," after the fourth sentence of the fourth paragraph, we insert the following language:

> As for Savage's contention that the State did not properly authenticate messages sent to him by others, we again disagree. The State was required only to introduce testimony sufficient to establish that the evidence was what

> the State claimed it to be. The State did not claim that messages sent by others were anything more than messages sent to Savage's cell phone. See *State v. Elseman*, 287 Neb. 134, 841 N.W.2d 225 (2014).

Savage, 301 Neb. at 885, 920 N.W.2d at 703.

In subsection "(b) Hearsay," following the second to the last paragraph, we insert the following paragraph:

> We also reject Savage's argument that text messages sent to his cell phone by unidentified individuals contained inadmissible hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Neb. Rev. Stat. § 27-801(3) (Reissue 2016). Messages sent to Savage's cell phone were not offered for the truth of the matters asserted. They were offered to prove that the statements were made.

Savage, 301 Neb. at 887, 920 N.W.2d at 704.

The remainder of the opinion shall remain unmodified.

Former opinion modified.
Motion for rehearing overruled.