

In The  
**Corte Suprema de Cassazione**  
(The Supreme Court of Cassation)

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MARGARET,  
*Petitioner,*  
v.

HERO,  
*Respondent.*

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On Appeal from the Superior  
Court of Messina

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**BRIEF FOR RESPONDENT**

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## **QUESTIONS PRESENTED**

1. Where Margaret willingly joined a plot to discredit and defame Hero, did the Superior Court of Messina err in holding that she was liable in tort as a co-conspirator with Borachio and Don John?
  
2. Where the record shows that Margaret impersonated Hero and engaged in sex with Borachio in Hero's bedroom by an open window, where they were clearly visible to passers-by, was there sufficient evidence to support the court's holding that she aided and abetted Borachio's and Don John's plan to slander Hero?

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## INTRODUCTION

This case is about a young woman who abused her relationship with her mistress and conspired to destroy her reputation by helping to orchestrate a Big Lie, thereby violating the most sacred (unwritten) law – the girl-code.<sup>1</sup> Margaret, the longtime attendant of Hero, worked in the Messina court and was acutely aware of the societal expectation that women behave modestly and chastely. She knew that women who are caught violating that societal expectation face severe consequences, including banishment to a nunnery and death. Margaret, at the behest of her lover, Borachio, agreed to participate in a dastardly scheme – a false flag operation<sup>2</sup> – with the evil Don John, to destroy Hero’s reputation by portraying her as an “approved wanton.” R.4.1.45.<sup>3</sup> To carry out this frame-up, Margaret had sex with Borachio in front of the window in Hero’s bedroom, while wearing Hero’s wedding dress, on the night before her wedding to Claudio, in full view of anyone out on a midnight stroll. Margaret allowed Borachio to call her by Hero’s name, ensuring that anyone within earshot would conclude that Hero was unchaste – indeed, she was “every man’s Hero.” R. 3.2.99-100. Of course, the conspirators left nothing to chance; Don John brought Claudio and Don Pedro to the orchard outside Hero’s bedchamber to bear witness to her unchaste behavior. Their plan worked. Claudio believed the worst of Hero and humiliated her at the altar, telling assembled guests what he thought he had seen the night before. Don Pedro confirmed this to be true. Hero’s denials were ignored and in fact led to further attacks against her character. And all the while, Margaret stood by and said nothing to exonerate Hero

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<sup>1</sup> The girl-code provides the basic rules governing female friendships. See Sheffler, Lisa, “Girl Code: The Unwritten Rules of Female Friendships” at <https://gentwenty.com/girl-code-the-unwritten-rules-of-female-friendships/>. As will be seen, Margaret’s behavior not only broke the girl-code, but provided a blueprint for aspiring “Mean Girls.”

<sup>2</sup> The term “false flag” originated in the 16th century as a figurative expression to mean “a deliberate misrepresentation of someone’s affiliation of motives.” See O’Conner, Patricia; Kellerman, Stewart, *The True History of False Flags*, (May 11, 2018). False flag operations became in vogue again during a very dark part of Messina’s history, flamed by the would-be 45th Prince of Aragon, and his operatives Sir Rudolph Giuliani, Sir Roger Stone, Sir Steve Bannon, Dame Kellyanne Conway, and the would-be Prince’s children, putative heirs to the throne.

<sup>3</sup> Citations to the text of the transcript of *Much Ado About Nothing* (R.) will be cited by act, scene, and line number using only the numerals, as indicated.

– providing powerful proof that she intended Hero’s undoing and was a willing participant in this conspiracy to defame.

We are faced with a riddle, a conundrum, a happenstance. Why would a fair maid conspire to do her mistress such a horrendous disservice? Why would she risk her post and position in this noble family for a knave, or for a night of frippery and indulgence? Why would she participate in a plot to malign and dishonor her mistress so? Why would she go to such measures to forestall her mistress’s marriage and bring shame upon her?

As the Superior Court of Messina concluded, the maid Margaret is not as she seems. She is not a gentlewoman –she chafes at her duties as an attendant, she despairs at her lot in life. Margaret longs for everything that she will never have, rhetorically asking Benedick “Why, shall I always keep below stairs?” R.5.2.9-10. She knows she will never have a man take her troth. She will never have a wedding bed or a marriage that would allow her to inherit vast wealth.

Behind Margaret’s blithe banter hides her jealousy, her despair, her rage at Hero’s good fortune and her own lack of fortune. Her circumstances turned her into a “mean girl.” For her, the #MeToo movement meant one thing – “I deserve the same! Me too!”<sup>4</sup> But Margaret is not the victim here. It is only through an accident of birth that it is not Hero, the maid, waiting on Margaret, the betrothed, on her wedding day. If one only closed one’s eye or tilted one’s head, it would be easy to see this alternate scenario – one in which Margaret was doted on by her father, who worshipped her. Margaret thought upon that scene every day, and it wracked her with longing for what was not, and could not be, given her class status.<sup>5</sup> Her longing swelled into a desire for revenge – a total, devastating revenge upon her mistress, who had done her no wrong except existing.

This case at its core involves a false flag operation and the Big Lie that led to the defamation of a woman based on unequal social expectations for women’s sexual behavior compared to that of men. While women have made significant progress as a result of the

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<sup>4</sup> #MeToo is known as #Anch’Io in Messina.

<sup>5</sup> It is no secret that Respondent’s counsel always sides with workers who have been mistreated, and not the employer. But there is no evidence that Hero mistreated Margaret, and nothing to justify Margaret’s cruel betrayal of her innocent mistress.

#MeToo movement in that more women are believed when they come forward complaining of sexual misconduct, women's voices are often ignored, and they are often smeared by men with bad motives and a loud voices.<sup>6</sup> Adding insult to injury is the reality that women are not believed. They are not believed when they claim they have been sexually harassed, even after an investigation by Messina's Attorney General Letitia James concluded that the Governor under investigation sexually harassed at least eleven women. And they are not believed when they say they did not have sex with another man on the night before their wedding, while standing at the altar before their entire family and community, facing accusations of infidelity from their husband-to-be.

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<sup>6</sup> Increasingly, men who claim to be the victims of the #MeToo movement have the audacity to sue women who have made credible allegations of sexual misconduct for defamation to silence and bankrupt them. See Kara Fox & Antoine Crouin, *Men are suing women who accused them of harassment. Will it stop others from speaking out?*, CNN (June 5, 2015), <https://www.cnn.com/2019/06/05/europe/metoo-defamation-trials-sandra-muller-france-intl/index.html>; see also Madison Pauly, *She Said, He Sued*, Mother Jones (Mar./Apr. 2020), <https://www.motherjones.com/crime-justice/2020/02/metoo-me-too-defamation-libel-accuser-sexual-assault/#>. If they do not sue their accusers, they simply deny the accusations and denounce their accusers as liars, or at best, offer half-hearted apologies for causing harm. See, e.g., *Report: New sexual harassment allegations against Washington; Daniel Snyder denies involvement*, NFL (Aug. 26, 2020), <https://www.nfl.com/news/report-new-sexual-harassment-allegations-against-washington-daniel-snyder-denies>; Charles Gasparino, *'Nothing inappropriate' happened, Chris Cuomo claims to associates*, New York Post (Feb. 16, 2022), <https://nypost.com/2022/02/16/nothing-inappropriate-happened-chris-cuomo-claims-to-associates/>; Dan Mangan & Kevin Breuninger, *New York Gov. Andrew Cuomo strongly denies sexual harassment claims*, CNBC (Aug. 3, 2021), <https://www.cnn.com/2021/08/03/new-york-gov-andrew-cuomo-response-to-sexual-harassment-report.html>; Meghan Keneally, *List of Trump's accusers and their allegations of sexual misconduct*, ABC News (Sept. 18, 2020), <https://abcnews.go.com/Politics/list-trumps-accusers-allegations-sexual-misconduct/story?id=51956410> (Donald Trump denies all allegations and calls women who accused him of rape, sexual assault, and sexual harassment liars); Ronan Farrow, *Les Moonves and CBS Face Allegations of Sexual Misconduct*, The New Yorker (July 27, 2018), <https://www.newyorker.com/magazine/2018/08/06/les-moonves-and-cbs-face-allegations-of-sexual-misconduct>; Michael M. Grynbaum, *Matt Lauer Offers Apology (With a Caveat)*, N.Y. Times (Nov. 30, 2017), <https://www.nytimes.com/2017/11/30/business/media/matt-lauer-nbc-statement.html>; *Statement from Harvey Weinstein*, N.Y. Times (Oct. 5, 2017), <https://www.nytimes.com/interactive/2017/10/05/us/statement-from-harvey-weinstein.html>.

To remedy this wrong, Hero brought claims against Margaret for conspiracy to defame and for aiding and abetting defamation.<sup>7</sup> She succeeded before the Superior Court of Messina and Margaret now seeks to overturn that judgment. Unlike Sarah Palin’s recent whining about opinions held by journalists who cannot see Russia from their backyard, Hero’s claims touch upon the very essence of a woman’s struggle to survive in a world still dominated by sexist, patriarchal norms even amidst the backdrop of the progress made by the #MeToo movement.

### STATEMENT

The Messina court in the summer of 2021 was filled with secrets, spying, eavesdropping, and rumors. Courtiers often whispered sweet nothings at the garden gate, and eavesdroppers blushed upon hearing the affectionate secrets, but something was different this summer; something malevolent was in the air.

Don Pedro, upon his return to Messina after a victory against his disgruntled, illegitimate brother, Don John (“John the Bastard” not to be confused with Don Juan), sought entertainment in the form of match-making and light-hearted trickery. Count Claudio, a young lord from Florence who proved himself a “lion” during battle, accompanied him to Messina, and fell instantly in love with Hero, the daughter of Messina’s governor, Leonato. R.1.1.15. Claudio planned to marry Hero, Leonato’s only heir, whom he declared was “the sweetest lady that I have every looked on”, in a week’s time. R.1.1.183-84.<sup>8</sup> Don Pedro approved of the union telling Claudio that “the lady is very well worthy” of his love. R.1.1.217-18.

Not willing to allow boredom to settle while the court waited for the wedding, Don Pedro set about tricking one of his soldiers, Benedick, into falling in love with Beatrice, the niece of Leonato, as their “skirmish of wit”<sup>9</sup> belied their deeper feelings of affection for

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<sup>7</sup> Fortunately, this case was heard by the Superior Court because of recently enacted legislation banning forced arbitration of cases involving sexual misconduct.

<sup>8</sup> Leonato told Claudio “take of me my daughter, and with her my fortunes.” R.2.1.296-97.

<sup>9</sup> In response to Benedick referring to Beatrice as Lady Disdain, for example, she remarked, “Is it possible disdain should die while she hath such meet food to feed it as Signior Benedick. Courtesy itself must convert to disdain if you come in her presence.” R.1.1.117-121.

one another.<sup>10</sup> This trickery, unlike the chicanery that is the subject of this appeal, was engaged in for a good purpose and involved orchestrating conversations which were intended to be overheard to convince Benedick of Beatrice's love for him, and vice versa. The entire court, acting as cupid, thereby brought two together who otherwise might not have gotten together. Silly courtship secrets led to everlasting professions of love.

But not every courtier sought to bring lovers together. Don John, the evil and brooding brother of Don Pedro,<sup>11</sup> plotted with Borachio to destroy young Hero and "the right noble" Claudio's nascent love, a plot uncovered by the Messinese Bureau of Investigation ("MBI") led by Director Dogberry. There was a not-so-merry war betwixt Don Pedro and Don John, and, having just finished licking his wounds, a bitter Don John eagerly embraced a conspiracy most foul to "cross" the marriage. R.1.3.65. Borachio proposed to Don John that they carry out a classic false flag operation in which Margaret – Borachio's long-time lover – would pretend to be Hero during a tryst he would orchestrate outside Hero's bedchamber the night before her wedding to Claudio.<sup>12</sup>

Borachio explained, "I can, any unseasonable instant of the night, appoint her to look out at her lady's chamber window" – a coded phrase for being able to arrange a sexual encounter with Margaret in the middle of the night in Hero's bedchamber. R.2.2.16-18. In furtherance of this plot "to be the death of the marriage" Borachio directed Don John to tell Don Pedro that he had made a terrible mistake facilitating the marriage between "the renowned

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<sup>10</sup> Don Pedro described his activities as taking on the Herculean task of "bring[ing] Signior Benedick and the Lady Beatrice into a mountain of affection" and sought the assistance of Leonato, Claudio, and Hero to make this happen. R.2.1.356-58.

<sup>11</sup> After hearing from his friend Don John that his "sadness is without limit," Conrade warned him not to make "the full show of this" having recently been forgiven by his brother for opposing him in battle. R.1.3.4,18-19. Don John acknowledged that he is a villain and rejected this advice outright, remarking that he "would rather be a canker in a hedge than a rose in [Don Pedro's] grace..." R.1.3.25-26.

<sup>12</sup> In plotting to disrupt their union, Don John, who had utter disdain for his brother, Don Pedro, and for "the most exquisite Claudio," saw an opportunity to hurt them both. R.1.3.48. He told Conrade, "This may prove food to my displeasure. That young start-up hath all the glory of my overthrow. If I can cross him any way, I bless myself every way." R.1.3.63-66. Later, as Borachio laid out the plot, Don John declared: "Any bar, any cross, any impediment will be med'cinable to me." R.2.2.4-5.

Claudio, whose estimation do you mightily hold up, to a contaminated stale” (i.e. Hero). R.2.2.24-25. Borachio further directed Don John to tell Don Pedro and Claudio that Hero loves Borachio, and he had seen them in Hero’s bedroom window. To prove this, Don John would then bring them to the orchard near Hero’s bedroom window to bear witness to her infidelity. Don John hoped that, in a fit of rage, Claudio would publicly denounce Hero as a common harlot and leave her in shame at the altar, thereby tearing asunder the alliance between Don Pedro and Leonato. For his part in this sordid affair, Borachio earned a hefty sum of 1,000 ducats, an invaluable commodity in today’s high inflation economy.<sup>13</sup>

The conspiracy was promptly carried out. Don John told Don Pedro and Claudio that “the lady is disloyal,” and that “Leonato’s Hero, your Hero, [is] every man’s Hero.” R.3.2.97-100. He entreated them to join him at midnight outside of her bedroom where they would see enough and hear enough to call off the wedding. Believing the worst of Hero before seeing anything himself, Claudio promised that if he was convinced of her infidelity, “tomorrow in the congregation where I should wed, there will I shame her.” R.3.3.117-18.

In this “#MeToo era of greater awareness of women’s mistreatment by men, one would expect Margaret, Hero’s lady-in-waiting and trusted confidant, to have spurned Borachio’s proposal to impersonate Hero in this reputation-wrecking scheme and to have immediately reported him to the MBI. Yet, Margaret enthusiastically participated in the scheme. Did her desire to please Borachio overcome her loyalty to Hero? Did Borachio offer her a cut of his 1,000 ducats? Did Margaret seek revenge because she was sick of her station in life and the class system that relegated her to permanent underclass status? Or did she seize this opportunity to strike out at her mistress? Regardless of her motives the facts are clear: on the night before Hero’s impending nuptials, Margaret betrayed her mistress, and broke the girl-code, to the benefit of two men and chose to allow Don Pedro and Claudio to think she was Hero having an affair with Borachio.

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<sup>13</sup> Messinese ducats were the forerunner to today’s Bitcoins.

The next morning, just hours before Hero's wedding, Margaret did protest too much. She lavishly praised the quality of Hero's dress, the same dress she wore while having sex with Borachio and made bawdy jokes about sex – all to taunt the unsuspecting Hero, knowing that her public humiliation was imminent.

Manipulated and deceived by the cunning of Don John, Borachio, and Margaret's bedroom performance, Claudio publicly humiliated Hero at the altar, terming her "an approved wanton" and "more intemperate in [her] blood than Venus, or those pampered animals that rage in savage sensuality." R.4.1.45, 60-62. He charged that she is not a maid and "knows the heat of a luxurious bed." R.4.1.41. Claudio demanded that Hero identify the man she had talked with between midnight and 1:00 a.m. goading her to do so "if you are a maid." R.4.1.90. When Hero denied speaking to any man at that time, Don Pedro substantiated Claudio's charge, calling Hero a "common stale" and attesting that he "[d]id see her, hear her, at that hour last night talk with a ruffian at her chamber window who hath indeed, most like a liberal villain, confessed the vile encounters they have had a thousand times in secret." R.4.1.68, 95-99. In short, he claimed to have seen her infidelity with his own eyes. Don John then bore false witness against Hero, telling the assembled guests that her sinful acts could not be described without offending those present. R.4.1.100-03. At this, Hero's own father, Leonato, asked for a dagger. R.4.1.114. Unable to bear the burden of this slander and her father's willingness to side with those who accused her despite her denials, Hero collapsed. At this, Leonato entreated fate not to take away "thy heavy hand. Death is the fairest cover for her shame that may be wished for." R.4.1.121-23.<sup>14</sup>

Though present for the cruel attacks on Hero's good name and having many opportunities to clear the air, Margaret spoke nary a word.<sup>15</sup> Instead of rushing to Hero's defense, she bore witness to

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<sup>14</sup> Leonato's suspicion about the infidelity of women was deeply ingrained. Indeed, when asked by Don Pedro when he first met Hero if she was his daughter, Leonato responded, "her mother hath many times told me so." R.1.1.103.

<sup>15</sup> To try to blunt this argument, the Petitioner claims that Margaret was not at the wedding and did not hear the calumnies and lies. This assertion is groundless. There is no question that Hero's lady-in-waiting attended her wedding. Ursula told Hero that Don Pedro, Claudio, Benedick, Don John and all the gallants of the town came to bring her to the church. R.3.4.92. Hero asked Margaret, Ursula, and Beatrice to help her get dressed, and then they all left to go the wedding. R.4.1.1 (identifying the Attendants (i.e., Margaret and Ursula) as present for the wedding).

the fruits of her deception. By failing to come to Hero's defense, Margaret betrayed Hero (and the girl-code), but also revealed her own participation in this terrible plot to destroy Hero's reputation.

By the time Hero regained consciousness, Claudio and Don Pedro had already abandoned her. Beatrice and Hero pleaded Hero's innocence. However, like most victims of male predations, even in this "#MeToo" era, a time when women ought to be readily believed, Hero's cries of innocence were ignored. The Friar, like Beatrice, immediately recognized the Big Lie that had been orchestrated, and thus devised a plan to resurrect Hero's reputation. Leonato began to see that he had misjudged his daughter. R.4.1.192. The Friar suggested that if Hero faked her death, then Claudio, Don Pedro, and all those who doubted Hero's character would surely soon be overcome with guilt and grief and would see the error of their ways. Hero, Beatrice, Leonato, and the Friar put their plan into action.

Unfortunately, while Don Pedro and Claudio expressed sorrow for Hero's death, they were not filled with sufficient guilt until they heard further evidence of the falsity of their accusations. Amidst drama befitting ABC's *The Bachelor*, Margaret, not satisfied with having ruined one couple's chance at happiness, further demonstrated her antagonism to women who enjoyed greater advantages than she did by flirting with Benedick, in an effort to steal him from Beatrice.

By a stroke of luck, the MBI's best men – Seacoal and First Watchman – caught wind of Don John's plot.<sup>16</sup> "Like a true drunkard," Borachio spilled his guts to his pal, Conrade, also known as "unindicted co-conspirator #1," in the streets of Messina for all to hear. R.3.3.103-04. Brought before Don Pedro and Claudio by Dogberry and his men, Borachio confessed to his crime and admitted to the conspiracy that is the subject of this appeal, stating: "I have deceived even your very eyes. What your wisdoms could not discover these shallow fools have brought to light, who in the night overheard me confessing to this man how Don John your brother incensed me to slander the Lady Hero, how you were brought in the orchard and saw me court Margaret in Hero's garments, how you disgraced her when you should marry her." R.5.1.242-49. He acknowledged that Don John had paid him richly for staging this false-flag operation. Leonato correctly concluded

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<sup>16</sup> Don John had already fled Messina, R.5.1.261, but was later captured and returned.

that Margaret “was packed in all this wrong.” R.5.1.313. Borachio came to his lover’s defense, insisting that she did not know what she was doing when she participated in his plot with Don John. R.5.1.315-318.

With Borachio’s confession, Don Pedro and Claudio finally repented for the part they played in humiliating and killing Hero. Claudio, despite his lack of poetic *savoir faire*, even composed and publicly performed a funeral dirge at Hero’s tomb to inform the court that Hero had been “[d]one to death by slanderous tongues.” R.5.3.3. Any such apology from Margaret, however, is notably absent from the record. And for good reason. She was not remorseful at all. Upon questioning by the MBI, Margaret feigned innocence, claiming she too had been deceived, though Leonato plainly recognized that “Margaret was in some fault for this.” R. 5.4.4. Despite multiple opportunities to confess, and opportunities to aid her mistress Hero, Margaret chose to abandon Hero to secure the friendship and sexual alliance of the men around her.

Content with Don Pedro’s and Claudio’s contrition, Leonato offered Claudio the hand of Hero’s cousin in marriage, who, unbeknownst to Claudio, was Hero in disguise. This was a strange bait and switch. Once Claudio took this “cousin” to be his wife, Hero revealed herself, which, though not quite the same as being awakened by a kiss and living happily ever after, still resulted in what seemed to be a semi-fairy tale ending. Reunited with this Hero from beyond the grave, Claudio rejoiced, Beatrice and Benedick – with a push from Claudio and Hero – professed their love for one another, and all were wed.

Even though the good “asses” of the MBI cracked the case and foiled the plan, all is not well that ends well. Though Hero, unlike many women throughout history who have been accused of infidelity by men, survived and ultimately wed Claudio, the damage had been done. While scandalous stories blanket the front page of newspapers, favorable outcomes for those implicated – and even corrections from the editor – are often buried deep within. Even worse, social media messages never die.<sup>17</sup>

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<sup>17</sup> A shockingly large segment of Messina’s population, easily identified because they wear red MAGA (Make Aragon Great Again) hats, still embrace the Big Lie, believing that Don John and Borachio are the real victims here. Indeed, a majority of them believe that Don John, and not his brother, is the true Prince of Aragon and that Hero – like all the accusers of the 45th (true) Prince of Aragon – is a liar. Further, the Big Lie that Hero is a whore who lied about Don John circulated on

Soon after their marriage, inspired by heroines depicted in Britney Spears' *Once More Once Upon a Time*, our Hero petitioned for absolute divorce from Claudio in the Superior Court of Messina, relying on the same record evidence transcribed by Wm. Shakespeare in this proceeding. The divorce decree and division of Claudio's and Hero's assets was affirmed by this Court. *See Much Ado About Nothing* (Supreme Court 2012).

Hero then sued her primary tormentors, who destroyed her reputation, caused Claudio to humiliate her and jilt her at the altar, and led her own father to wish her dead. She brought claims of slander and defamation against Don John, claims of conspiracy to defame her against Don John, Borachio, and Margaret, and claims of aiding and abetting Don John's defamation against Borachio and Margaret. The trial court entered a default judgment against Don John when he failed to appear to defend his actions. The court entered summary judgment for Hero on her claims against Borachio, who admitted that Don John "incensed him to slander the Lady Hero" and that he took overt actions that confirmed "any slander Don John had made."

Margaret denied that she had conspired with Don John and Borachio or that she had aided and abetted Borachio's actions intended to defame Hero.<sup>18</sup> The court conducted a trial, and, after reviewing all the evidence, as described above and transcribed in *Much Ado About Nothing*, the court found that Margaret's behavior with Borachio constituted an adequate basis for inferring the two had intended to act in concert, and thus had conspired to defame Hero. The court also found that Margaret's conduct demonstrated that she took actions by wearing Hero's dress and making love with Borachio in Hero's bedroom while he called her Hero, that aided and abetted the plan to defame Hero. The court also found Borachio's testimony that Margaret did not know what she was

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his Twitter Feed, which has 83 million followers, and that message will never be deleted. Don John attempted to rouse his followers, the Messinese Oath Takers and Proud Boys, to stage a coup and put him in line for the throne, but this plot too was foiled by the redoubtable MBI.

<sup>18</sup> As was on fully display in several different courts in Messina recently – women do in fact conspire with powerful men to the detriment of other women – and then deny it. Think Ghislaine Maxwell, Elizabeth Holmes, Sidney Powell. Alas!

doing was not credible. Margaret petitioned this Court to overturn the judgment of the Superior Court.

### ARGUMENT

A woman's chastity and reputation for chastity have been critical to her well-being, family acceptance, and social standing throughout history in all nations.<sup>19</sup> Slanderous words imputing immorality are considered defamation *per se* because they cause such grievous injury to the woman so maligned. See, e.g., *Goldsmith v. Unity Indus. Life Ins. & Sick Benefit Ass'n.*, 13 La. App. 448, 128 So. 182 (La. Ct. App. 1930), 5 Mess. Rept. 448 (Mess. Sup. Ct. 1930) (defamatory words that impute immorality are calculated to arouse hatred or ridicule and are "defamatory per se" and malice is presumed); *McKnight v. McKnight*, 2021 WL 4133970 (D. Az. Sept. 10, 2021), 100 Mess. Rept. 413 (Mess. Sup. Ct. 2021) (court denies father's motion for summary judgment, holding his social media post accusing daughter of consensually engaging in incestuous conduct constitutes defamation).

The esteemed former president of the United States, Abraham Lincoln, handled almost 70 slander suits during his career as a lawyer, and many of those involved accusations against women of adultery or fornication. He always tried to mediate such disputes and restore the good name of the victim of slander because he knew her standing and reputation in her community was her most valuable asset. See "*The Lawyer as Peacemaker: Law and Community in Abraham Lincoln's Slander Cases*," Mark E. Steiner, *Journal of the Abraham Lincoln Ass'n*, Vol. 16, Issue 2 (Summer 1995) available at <http://hdl.handle.net/2027/spo.2629860.0016.203>.

Margaret, however, was unwilling to express regret or repentance, or even to admit her wrongdoing, so a peaceable resolution would have been beyond even President Lincoln. Margaret's participation in a plot to destroy Hero's reputation and happiness was a heinous act rightly subjecting her to the full scope of the law's power to force her to compensate Hero for the harm she has caused. The evidence supports the trial court's judgment, and this Court should affirm. The Court should affirm for the additional reason that Hero's successful defamation action, challenging slander that was aided and abetted by Margaret's actions and conspiracy with Don John and Borachio, served a broader public interest. When malicious actors fabricate deep lies about innocent

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<sup>19</sup> To be clear, feminists (and civil rights lawyers who handle sex discrimination cases) have a lot of work to do!

people, the publication of those lies damages the whole society because, as illustrated in this case, ordinary citizens of Messenia lacked the resources to detect the extent of the misinformation circulating through all media. Hero's litigation helped to restore public confidence and thus served important purposes beyond compensating her for the injury to her reputation.

### **I. Margaret Conspired with Borachio and Don John to Destroy Hero's Reputation.**

There is no dispute that the primary architects of the scheme to destroy Hero's reputation were Don John and Borachio. But their scheme would have come to naught without Margaret's willing participation.<sup>20</sup>

Hero's first claim against Margaret is that Margaret conspired with Don John and Borachio to defame her. The elements of a civil conspiracy to commit a tort such as the defamation in this case are: (1) an agreement between two or more persons; (2) to participate in an unlawful act (including a civil tort); (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement; (4) which act was done in furtherance of the common scheme. *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983), 50 Mess. Rept. 472 (Mess. Sup. Ct. 1983). The evidence is uncontroverted that Don John and Borachio conspired to defame Hero, but Margaret maintains she did not enter into any agreement with them, and that there is no evidence of any such agreement.

Proof of conspiracy does not require direct evidence, which is seldom available. *Peterson v. Cruickshank*, 144 Cal. App. 2d 148, 300 P.2d 915, 925 (Cal. Ct. App. 1956), 20 Mess. Rept. 148 (Mess. Sup. Ct. 1956). Instead, courts look to the surrounding circumstances that permit an inference that two or more individuals reached an understanding. Some of the relevant factors courts consider are the length of time the co-conspirators worked together,

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<sup>20</sup> In a recent, eerily similar case (recorded by the self-same scribe who transcribed the proceedings in the instant case), *A Winter's Tale*, Leontes was responsible for Hermione's distress when he recklessly accused her of adultery. But Leontes and Hermione joined in suing her attendant, Paulina for intentional infliction of emotional distress based on her lying about Hermione's "death" and keeping her hidden from Leontes for sixteen years. *See Hermione and Leontes v. Paulina* (Supreme Court of Sicily 2020). There, as here, a trusted attendant orchestrated a malevolent plot that caused her mistress enormous harm.

the proximity in time and place of their separate actions, and any other indicia of a common intent. *Halberstam*, 705 F.2d at 481.

Here, the facts overwhelmingly demonstrate that Margaret reached an agreement with Borachio to further his scheme with Don John. Fortunately, the evidence in this case does not depend on documents, since Don John shredded all written messages about the conspiracy, nor on banking records, since the record is silent about whether Borachio gave Margaret a cut (e.g. 500 ducats) for her role. Nevertheless, Margaret cannot deny that she made sure Hero was not in her room the night before her wedding, agreed to Borachio's request that she meet him in Hero's bedroom at midnight that night, and that she wear Hero's dress, and respond when Borachio called her "Hero." Margaret cannot deny that she had sex with Borachio under these unusual circumstances while in plain view of anyone who might have passed by Hero's window in the night. Margaret cannot deny that she called out her farewells to Borachio a "thousand" times, like a lovestruck Juliet with her Romeo. Margaret had to know that she could be seen from a distance even at night because of the light from the room behind her. Margaret had to know that she could be heard at a distance because of her loud calls to her departing lover. And indeed, she was both heard and seen.

Margaret and Borachio had been lovers for over a year, and she had never before engaged in such a scenario with him. When Borachio eagerly described to Don John the scenario he would enact with Margaret, he knew she would agree because during their long affair he had been privy to Margaret's resentment of Hero, and he knew she would be willing to join in a plan to ruin her. Margaret at an absolute minimum would have recognized that Borachio, employed by the known traitor Don John, had some scheme in the works, and yet she expressed no hesitation in agreeing to his plan.

The Superior Court of Messina reasonably inferred that Margaret agreed with Borachio to act out this lovemaking scene on in Hero's bedroom, wearing Hero's dress, and being called Hero, with the intent to humiliate Hero in some way. Margaret knew as well as any woman in Messina that a lady's marriageability, and her future standing as a member of a society, depended on her chastity and innocence, so her impersonation of Hero and her conduct – all done in a very public and visible manner – could not have had any other purpose than to injure Hero. While Margaret's motives for conspiring to destroy Hero's reputation are unclear, her actions

demonstrate that she allied herself with men, Borachio her lover and his superior, Don John, to carry out whatever plot they had in mind.

Proof that someone is a co-conspirator does not require that an individual know all the details of the plan or that she explicitly states her agreement to participate. Tacit understanding is sufficient to show agreement in a civil conspiracy action. *Halberstam*, 705 F.2d. at 477 (citing W. Prosser, Law of Torts § 46 at 292). Margaret's wanton behavior demonstrates her tacit understanding of the conspiracy to which she contributed the key overt actions. No one as bright as Margaret could fail to know the obvious consequences of the actions she agreed to undertake.

If more evidence is needed, there is more. Margaret had no qualms about flouting social conventions governing women's moral character and behavior and taking ribald joy in her own bawdy wit. In another context Margaret might be rewarded for her resistance to the double standard and the narrow confines of what is considered respectable behavior for women. This is especially so, considering that a man in her shoes would surely not be criticized for flaunting his bawdiness, but rather could expect to be admired. But Margaret's lewdness, as reflected in the record, demonstrates something more malignant than chafing at the double standard: It demonstrates a willingness, and even an eagerness, to insert herself into the romantic relationships of the women close to her to undermine them.

The record demonstrates that Margaret embraced her ability to ingratiate herself with men and embarrass the women around her: Benedick testified that Margaret flirted with him at the ball and warned him she has many "ill qualities." R.2.1.100. What quality could be more "ill" than a willingness to betray her mistress and help to orchestrate her public humiliation? Margaret's interactions with Beatrice and Benedict reflect her delight in using her uncommon lewdness to degrade the women in her circle while bolstering her connections with the men.<sup>21</sup> Margaret enjoyed insulting Beatrice and making vulgar comments about her alleged feelings for Benedick, for instance noting that Beatrice's feelings could be alleviated with a prick from the thistle *carduus benedictus*.

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<sup>21</sup> Margaret's motives were malignant and her jokes and innuendo might even constitute sexual harassment in some settings. That issue will undoubtedly be before this Supreme Court of Cassation another day after the Court has finished taking a wrecking ball to the reproductive rights of women, the voting rights of disenfranchised Americans, and the rights of workers and unions. But we digress...

R.3.4.70-80. Margaret knew that such vulgar jokes were unacceptable in Beatrice's and Hero's social circle, especially when made by women. Benedick testified that shortly after the debacle at the wedding, Margaret asked Benedick to write a sonnet for her praising her beauty, and then used his gallant response to make a crude sexual pun. R. 5.2.4-10. Why would Margaret tease Beatrice about her feelings for Benedick, make a sexual joke about Benedick's name referring to his sexual prowess, only to then seize on an opportunity to flirt with Benedick, if not to undermine the blooming relationship between Beatrice and Benedick?

Margaret made lewd comments to Hero as well on the morning of her wedding, gleefully embarrassing her by speaking of the sexual activities that would take place in her marriage. R.3.4.26-37. Margaret also took great delight in teasing Hero about which dress she should wear for her wedding, urging her to wear the same gown and collar Margaret herself had "borrowed" for her tryst with Borachio the night before. R.3.4.6-25.

Margaret's high spirits were noticeable to both Hero and Beatrice and became explicable when her perfidy was later revealed. Her excitement and willingness to tease and goad the two ladies she served reflected her guilty knowledge that she had laid the groundwork for Hero's fall from grace and privilege.

The only evidence supporting Margaret's innocence was the testimony of Leonato, who said that "Margaret was in some fault for this" but he thought she acted out the sex scene with Borachio "against her will," R.5.4.4-5, and Borachio's incredible assertion that Margaret did not know what she was doing. The trial court quite properly rejected these statements and instead gave weight to the overwhelming evidence described above that demonstrates Margaret's knowledge of her role in Borachio's and Don John's plot. And of course, the trial court's credibility determinations may not be overturned unless there is clear error.

Margaret's knowing complicity in a plot to defame and destroy Hero is most evident in the fact that she said nothing when Claudio denounced Hero and refused to marry her, calling her a "wanton" who "knows the heat of a luxurious bed." Claudio specifically questioned Hero about who she was talking to through her bedroom window at midnight the night before. Margaret did not speak up and explain that it was she at the window, which would have saved Hero from the agony of Claudio's denunciation. She did not speak up

because she had willingly agreed with Borachio to act out a lovemaking scene that would produce exactly this result.<sup>22</sup>

## **II. Margaret Aided and Abetted Don John and Borachio in Their Plot to Destroy Hero's Reputation.**

Hero's second claim against Margaret is that she aided and abetted Don John and Borachio in their plot to defame Hero. Margaret challenges the sufficiency of the evidence to support the trial court's conclusion that she aided and abetted Don John and Borachio in carrying out their plot. Her appeal borders on the frivolous.

Margaret's aiding and abetting is established through proof that Don John performed a wrongful act that caused an injury to Hero; that Margaret was generally aware of her role, along with Borachio, as part of an overall wrongful act at the time she provided assistance; and that Margaret knowingly and substantially assisted in the primary wrongdoing. *Halberstam*, 705 F.2d at 477. The key element in establishing that someone has aided and abetted another person in performing a wrongful act that causes injury is the level of assistance she actually provides, because the assistance must be substantial. *Id.*

The evidence of Margaret's actions in furthering Don John's and Borachio's dastardly scheme more than satisfies this standard. Don John's wrongful act was commissioning Borachio to carry out a scheme that would lead any passerby to conclude that Hero was a whore, then urging Claudio and Don Pedro to station themselves in the orchard to watch Hero's bedroom window the night before the wedding. Borachio aided Don John by devising the plot that would convince Claudio of Hero's immoral behavior so that he would renounce her at the altar. Margaret's contribution to his scheme, as described above, was substantial, indeed it was the *sine qua non* of the entire scheme.

One who simply provides the means for a target's undoing can be liable as a joint tortfeasor. *Russell v. Marboro Books*, 18 Misc. 2d 166, 183 N.Y.S.2d 8 (N.Y. Sup. Ct. 1959), 22 Mess. Rep. 166

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<sup>22</sup> We note that Margaret has waived any argument that the conspiracy did not cause injury to Hero. She did not argue for summary judgment on that basis nor did she identify any such lack of injury as an issue on which she sought review. *See infra* at 19-20 for evidence of the harm this scheme caused Hero.

(Mess. Sup. Ct. 1959).<sup>23</sup> Here, Margaret's participation in the contrived lovemaking scene was the indispensable prerequisite to the slander orchestrated at Hero's wedding, and thus she provided the substantial assistance required to establish her own liability. Although she might argue she did not know how Don John and Borachio intended to use her impersonation of Hero to Hero's detriment, that profession of ignorance is not credible in one who is as bright as Margaret, as discussed in Part I. Margaret understood that Borachio was often in the employ of the villain Don John, and she knew she was acting out a scenario that could do nothing but harm her mistress. For Margaret to feign innocence under these circumstances would be laughable if it had not led to such tragic consequences.

Even if the trial court had credited the unlikely possibility that Margaret did not know how Don John and Borachio intended to use her impersonation of Hero at that moment, its purpose became pellucidly clear at the wedding itself. There Margaret rendered overwhelmingly substantial assistance to Don John's and Borachio's nefarious scheme by keeping her mouth shut. She obviously knew Hero was not entertaining a man in her room the night before, because she was the woman in Hero's bedroom, wearing Hero's dress, and being called Hero. But rather than rescue her mistress from the ignominy of being branded a wanton whore, she provided the *coup de grace* to Don John's and Borachio's scheme and watched in silence as Hero died from shame. That ultimate humiliation was the entire purpose of Don John's and Borachio's plot and Margaret helped Borachio execute it with chilling aplomb.

Don John's defamation, aided and abetted by Borachio and Margaret, caused Hero severe emotional distress. Margaret cannot be heard to argue that this suit is much ado about nothing because all ended well for Hero when she wed her Prince a few days after her public humiliation, and thus suffered no injury. Margaret cannot advance that argument because she has waived it. But even if this Court were to consider that argument, we can demonstrate that Hero continues to suffer from the trauma of that day. Obviously, she did

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<sup>23</sup> In that case, the defendant book company sold a model's picture to another company, knowing it would use the picture to defame the model. The court held that the acquisition of the photograph was an indispensable prerequisite to the libel, so the sale of the picture, with knowledge of the buyer's intent to publish it to the model's detriment, constituted "substantial assistance" for joint tort liability.

not suffer as Desdemona did from Othello's irrational jealousy, similarly spurred by the malevolent machinations of a trusted lieutenant. Indeed, had Don John given Claudio one of Hero's handkerchiefs, our Hero too might have been truly lost to us. But although Margaret's conduct was not as destructive as Iago's, she nevertheless injured Hero. Hero divorced Claudio but still has nightmares and has trouble forming trusting relationships with others. She has grown reclusive and has bouts of depression. Margaret's conduct contributed to an unlawful act that has had lasting consequences (including several million hits on the internet and many retweets), and thus she is liable for the full panoply of relief the court ordered.

### CONCLUSION

This Court should deny Margaret's petition and affirm the judgment of the trial court.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on March 10, 2022, I filed a copy of the Brief of Respondent, Hero, via the electronic filing system of the Supreme Court of Cassation. All attorney participants are registered electronic users and will be served electronically via that system.

Dated: March 10, 2022

/s/ Debra S. Katz

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