

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALFONSO QUINTERO	§
	§
Defendant Below-	§ No. 196, 2006
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE	§ in and for New Castle County
	§ Case No. 0504024519
Plaintiff Below-	§
Appellee.	§

Submitted: November 8, 2006

Decided: November 22, 2006

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

ORDER

This 22nd day of November 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Alfonso Quintero, filed an appeal from his April 7, 2006, convictions for Trafficking in Cocaine, Possession With Intent to Deliver a Narcotic Schedule II Controlled Substance, Use of a Vehicle for Keeping Controlled Substances, and Conspiracy in the Second Degree. We find no merit in the appeal. Accordingly, we affirm the judgments of the Superior Court.

(2) In this appeal, Quintero contends that the trial judge abused his discretion by allowing the investigating officer to testify that a companion of

the defendant at the time of the arrest was “working with police.” According to Quintero, that statement: first, violated the Confrontation Clause; second, was inadmissible hearsay; and third, was improper vouching. Quintero also argues that the trial judge should have declared a mistrial when the same officer testified that he knew Quintero from prior “arrest photos.”

(3) Quintero’s first argument is that his Sixth Amendment right to confrontation was violated by the investigating officer’s testimony at trial that his companion, Massimino Hernandez, was “working with police” when he was in the back of Quintero’s car, where the drugs were found. According to Quintero, the officer’s statement is “testimonial evidence”¹ that is attributable to Hernandez. The State asserts the evidence was offered to explain why the police did not charge Hernandez with a crime, despite his proximity to the drugs.

(4) The trial judge ruled the officer’s testimony was admissible for the explanatory purposes, but only if its probative value was not outweighed by its prejudicial effect. The trial judge concluded, “[o]n the balancing, I do find [the testimony] highly probative and not unfairly prejudicial.” We hold Quintero’s argument that his Sixth Amendment right to confrontation was

¹ *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004).

violated is without merit. Quintero had an opportunity to confront and cross-examine the officer who made the challenged statements.

(5) Quintero's second and related contention is that the investigating officer's statement that Hernandez was "working with police" was inadmissible hearsay. Quintero acknowledges that the officer did not repeat any specific statement attributed to Hernandez. The State argues that the statement was relevant to explain the police action of charging Quintero and not Hernandez. Hearsay is "a statement, other than one made by the declarant while testifying at trial...offered in evidence to prove the truth of the matter asserted."² "This Court has held that testimony regarding statements which explain why the police believed a particular person was a suspect is not hearsay, because the accuracy of the statements is not asserted."³ Accordingly, the testimony by the investigating officer that Hernandez was "working with the police" is, by definition, not hearsay.

(6) Quintero's third argument also relates to the investigating officer's statement that Hernandez was working with the police. Quintero submits that testimony constituted improper vouching. Improper vouching occurs when one witness bolsters the credibility of another witness by testifying that the other witness is telling the truth. As a general rule, this is

² Delaware Rules of Evidence 801(c).

³ *Johnson v. State*, 587 A.2d 444, 448 (Del. 1991).

prohibited.⁴ In this case Hernandez did not testify and was not a witness in the case. As a result it was impossible for the investigating officer to have improperly vouched for him. This argument is without merit.

(7) Quintero’s final argument is that the trial judge abused his discretion by not declaring a mistrial when the investigating officer testified that he knew Quintero from prior “arrest photos.” The trial judge immediately issued a curative instruction to the jury to disregard this unsolicited response from the investigating officer. “Mistrials are required only where there is manifest necessity or the ends of public justice would be otherwise defeated.”⁵ A trial judge is in the best position to evaluate the prejudicial effect of an unsolicited response by a witness on a jury.⁶ A prompt curative instruction to the jury to disregard improper testimony will usually cure any prejudice.⁷

(8) Quintero presented no evidence that the trial judge did not adequately address or explain the factors that need to be considered when determining if a mistrial should be granted for an unsolicited response. There is no evidence that the trial judge abused his discretion in regard to the

⁴ See *Capano v. State*, 781 A.2d 556, 595 (Del.2001).

⁵ *Pena v. State*, 856 A.2d 548, 552 (Del. 2004) (internal quotations omitted).

⁶ *Id.* at 551 (citing *Taylor v. State*, 690 A.2d 933, 935 (Del. 1997)); (see also *Bailey v. State*, 521 A.2d 1069 (Del. 1987)).

⁷ *Pena v. State*, 856 A.2d at 551.

challenged statement. Consequently, Quintero's final claim of error is also without merit.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT

/s/ Randy J. Holland
Justice