

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PEDRO E. CINTRA,	§
	§ No. 496, 2003
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for Sussex County
	§ Cr.A. Nos. IS02-12-0369;
STATE OF DELAWARE,	§ IS03-01-0909; PS03-01-0905;
	§ IS03-01-0908
Plaintiff Below,	§
Appellee.	§

Submitted: March 16, 2004

Decided: May 25, 2004

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 25th day of May, 2004, on consideration of the briefs of the parties and the respective arguments set forth therein, it appears to the Court that:

(1) The defendant-appellant, Pedro Cintra (“Cintra”) was indicted on charges of one count each for Assault in the First Degree and Reckless Endangering in the First Degree, two counts of Aggravated Menacing, and four counts of Possession of a Deadly Weapon During the Commission of a Felony. A jury trial on these charges began on July 28, 2003 in Sussex County Superior Court.

(2) Cintra was convicted of the lesser-included offense of Assault in the Second Degree, as well as Possession of a Deadly Weapon During the Commission of a Felony, Aggravated Menacing and the related possession charge. He was also convicted of the lesser-included offense of Reckless Endangerment in the Second Degree. Sentencing occurred on September 26, 2003. Cintra filed a timely appeal of his convictions with this Court.

(3) The sole issue raised by Cintra on appeal is whether the trial judge abused his discretion by admitting into evidence the victim's prior out-of-court statement pursuant to Del. Code Ann. tit. 11, § 3507. With respect to this issue, Cintra submits that there were two errors. First, he argues the trial judge erred in admitting the statement despite the State's failure to prove that it was truthful. Second, he contends that the State failed to produce adequate "indicia of reliability" to provide the jury with a satisfactory basis for evaluating the truth of the statement.

(4) In the early morning hours of December 13, 2002, Faye Cintra arrived at the Nanticoke Hospital Emergency room. Her neck was cut, the great toe on her right foot was severed, and a second toe was nearly amputated. While at the hospital, she explained to the police that she had received divorce papers and wanted her husband, the defendant, Pedro E. Cintra, out of the house. She also told the police that her husband had

obtained a butcher knife from the kitchen, brought it into the bedroom, and pointed it at her while calling her “nasty” names. These statements to the police were tape recorded.

(5) At the Cintra residence, the police found Pedro Cintra asleep on the living room couch and two knives out in plain view. In the bedroom, the police found blood on the bedding and carpet in the master bedroom. There were also four or five cuts on one of the bedposts in that bedroom. Woodchips could be seen laying on the floor next to the bedpost. Cintra was arrested and taken to the police station. He later gave an audio taped statement, during which he admitted to trying to chop off his wife’s head. The next day, the victim’s daughter discovered her father’s machete in the woods behind the house. She found her mother’s toe underneath a dining room chair.

(6) At trial, Faye Cintra testified on direct examination that she did not want to testify, that she loved her husband, and visited him in prison every other week.<sup>1</sup> Her testimony regarding the incident was vague and inconsistent. She first claimed that she had been alone in her bedroom when

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<sup>1</sup> The victim and her husband had apparently reconciled before she testified. Although she had been subpoenaed by the State, she had failed to appear for the first day of trial, and the Superior Court issued a capias for her arrest as a material witness. She was brought to court the following day and asked by the trial judge why she failed to appear. The trial judge stated that he did not believe her explanation.

her toe was cut off, but denied that she cut it off herself. Later, she testified she could not remember the incident because it happened so fast. However, she testified that her husband had not cut her neck, that the injury was self-inflicted and had occurred several weeks prior to her toe injuries.

(7) When questioned about her taped statements to the police, Faye Cintra claimed she was unable to recall whether she had spoken with a police officer at the hospital the night of the incident. She further testified that she was not sure the voice on the tape was hers. Cintra also testified that she did not know what she had said to the officer, even though she listened to the interview tape approximately one hour before testifying. When asked whether her statement to the police officer was truthful, she gave conflicting answers. In light of her statements on the witness stand, the trial judge allowed into evidence her out-of-court statement pursuant to Section 3507.

(8) Section 3507 reads in pertinent part:

§ 3507. Use of prior statements as affirmative evidence.

(a) In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

(b) The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

A primary purpose of this statute is to deal with “the turncoat witness who cannot recall events on the witness stand after having previously described them out-of-court.”<sup>2</sup> As such, the rule does not require that the out-of-court statement and the trial testimony be consistent.<sup>3</sup>

(9) Pedro Cintra’s arguments concerning the admissibility of his wife’s recorded statements misinterpret Section 3507. To be admissible, Section 3507 requires only that: (a) the out-of-court statement be voluntary;<sup>4</sup> (b) the witness testifies about both the events perceived and the out-of-court statement, and whether or not they are true;<sup>5</sup> and (c) the witness be subject to cross-examination on the content of the statement and its truthfulness.<sup>6</sup>

(10) In this case, all three criteria are met. At trial, the judge ruled that the statement was voluntary.<sup>7</sup> Faye Cintra testified about the events as she perceived them, as well as her out-of-court-statement to police. She also testified to the truthfulness of her comments, though her testimony on those points is conflicting. Faye Cintra was also subject to cross-examination about her out-of-court statements. The jury was given a full opportunity to

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<sup>2</sup> *Johnson v. State*, 338 A.2d 124, 127 (Del. 1975).

<sup>3</sup> *Demby v. State*, 695 A.2d 1152, 1161 (Del. 1997) (“There is no requirement that the witness offer consistent trial testimony.”).

<sup>4</sup> *Hatcher v. State*, 337 A.2d 30, 32 (Del. 1975).

<sup>5</sup> *Keys v. State*, 337 A.2d 18, 20 n. 1 (Del. 1975).

<sup>6</sup> *Id.*; *Johnson v. State*, 338 A.2d 124, 127 (Del. 1975).

<sup>7</sup> Moreover, Cintra has not raised this as an issue in this appeal.

observe her demeanor and any weaknesses in the credibility of her testimony. Accordingly, her out-of-court statement was properly admissible under Section 3507.<sup>8</sup>

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

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>8</sup> There is thus no need to examine Cintra's "indicia of reliability" arguments, because he was afforded a face-to-face confrontation with the victim. *Tucker v. State*, 564 A.2d 1110, 1123-24 (Del. 1989).