

IN THE SUPREME COURTY OF THE STATE OF DELAWARE

FRANCIS CURCY, )  
 ) No. 670, 2011  
 Defendant Below, )  
 Appellant, ) Court Below: Superior Court  
 v. ) of the State of Delaware in  
 ) and for Sussex County  
 )  
 STATE OF DELAWARE, ) Cr. ID No. 1105016245  
 )  
 Plaintiff Below, )  
 Appellee. )

Submitted: July 11, 2012  
Decided: August 16, 2012

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

***ORDER***

This 16<sup>th</sup> day of August 2012, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

(1) A jury convicted Francis Curcy of Burglary Third Degree, Theft Less Than \$1500, and Criminal Trespass Second Degree. On appeal, Curcy argues only that the Superior Court judge erred by admitting into evidence a statement made out of court by a police officer describing Curcy's behavior. We affirm the Superior Court's judgment because Curcy's argument depends on a mischaracterization of the admitted recording. Curcy's recorded agreement with the officer's summary of events turned otherwise inadmissible hearsay into a paradigmatic example of the hearsay exclusion contained in D.R.E. 801(d)(2).

(2) At 1:30 am on May 20, 2011, Marina Matos saw Curcy, her neighbor, carrying weights she owned through her yard. Matos checked on the spot in her shed where she kept the weights. Finding them missing, she walked to the front of the house, and found her weights in Curcy's minivan. Matos saw Curcy walk back toward her shed, and confronted him. Curcy apologized and asked how much the weights cost. Matos told Curcy she was not selling the weights, and contacted the police.

(3) When an officer arrived, he recorded his interview with Curcy. The resulting recording, played before the jury, gives rise to this appeal:

Officer: I interviewed the victim this, uh, this morning and from what I understand from her, she was inside her residence watching TV, about midnight to twelve thirty-ish in the morning, uh, when she observed you walk by, um, her window which alerted her to see what you were doing in the back yard. From her statement, she actually seen you, uh, inside the shed removing the weights, carry, you, you took them back to a vehicle that was parked on Sussex Avenue and then she confronted you out on the street last night.

Curcy: Yes.

Officer: Does that all sound true?

Curcy: Yes, sir.

(4) During trial, Curcy defended himself by claiming that he believed the weights were trash, and so thought he was not stealing them. Curcy claimed the weights had been kept outside of the shed, in the yard, and so said that he did not enter the shed.

(5) Curcy argues on appeal that the Superior Court judge erred by admitting an out of court statement made by a non testifying witness. D.R.E. 801(c) defines hearsay as “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.” This argument depends on the idea that admission of the recording served as a conduit through which the State introduced Matos’ summary, relying on the trustworthiness of her out of court statement to a police officer, without having her testify.

(6) We review a Superior Court judge’s decision regarding the admissibility of evidence for abuse of discretion.<sup>1</sup>

(7) The Superior Court judge properly admitted the statement, because in the recording, Curcy admitted the accuracy of the summary given by the officer. The jury need not rely on Matos’ truthfulness, but may instead rely on the defendant’s admission, as proof that the described summary accurately captures that night’s events. Under Rule 801(d)(2)(B), a statement does not count as hearsay if it “is offered against a party and is . . . (B) a statement of which he has manifested his adoption or belief in its truth . . . .” Curcy adopted the officer’s summary of events when he agreed, “Yes, sir,” that the summary did “sound true.”

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<sup>1</sup> *Forest v. State*, 721 A.2d 1271, 1275 (Del. 1999).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice