

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2003

HECTOR R. TORRES,	**	
Appellant,	**	
vs.	**	CASE NO. 3D02-1217
THE STATE OF FLORIDA,	**	
Appellee.	**	LOWER TRIBUNAL NO. 00-41068

Opinion filed June 11, 2003.

An appeal from the Circuit Court for Dade County, Victoria S. Sigler, Judge.

Bennett H. Brummer, Public Defender, and Valerie Jonas, Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General, and Jill K. Traina, Assistant Attorney General, for appellee.

Before COPE, GODERICH and GREEN, JJ.

PER CURIAM.

Hector R. Torres appeals his convictions for aggravated assault on a law enforcement officer and possession of marijuana. We affirm.

At trial, a police officer testified over defense objection

that a witness had said defendant-appellant "is always armed with a .25 [pistol]." The hearsay objection was well taken. It was not a spontaneous statement "describing or explaining an event or condition made while the declarant was perceiving the event or condition" § 90.803(1), Fla. Stat. (2002). See Charles W. Ehrhardt, Florida Evidence § 803.1 (2002). Thus, the hearsay exception for spontaneous statements did not apply.

Likewise, the declarant's statement was not one which related "to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." § 90.803(2), Fla. Stat. (2002). The officer's testimony negated the existence of any stress of excitement on the part of the declarant. Thus, the hearsay exception for excited utterances did not apply. See Charles W. Ehrhardt, Florida Evidence § 803.2.

Under the circumstances of this case, however, the evidentiary error was harmless beyond a reasonable doubt. State v. DiGuilio, 491 So. 2d 1129 (Fla. 1986).

Affirmed.