

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. 2004

PEDRO LARA,	**	
Appellant,	**	CASE NO. 3D03-8
vs.	**	LOWER
THE STATE OF FLORIDA,	**	TRIBUNAL NO. 01-34454
Appellee.	**	

Opinion filed March 17, 2004.

An Appeal from the Circuit Court for Miami-Dade County,
Cecilia M. Altonaga, Judge.

Bennett H. Brummer, Public Defender, and Susan Martin, Special
Assistant Public Defender, for appellant.

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

Before SCHWARTZ, C.J., and GREEN, J., and BARKDULL, THOMAS H., JR.,
Senior Judge.

PER CURIAM.

Affirmed. See § 59.041, Fla. Stat. (2003); Bradley v. State,
787 So. 2d 732, 743-44 (Fla. 2001); Murphy v. Int'l Robotic Sys.,

Inc., 766 So. 2d 1010, 1028-29 (Fla. 2000); State v. Jano, 524 So. 2d 660, 661-62 (Fla. 1988); Bell v. State, 847 So. 2d 558, 560-61 (Fla. 3d DCA 2003); Pino v. State, 776 So. 2d 1081 (Fla. 3d DCA 2001).

GREEN, J., and BARKDULL, THOMAS H., JR., Senior Judge, concur.

SCHWARTZ, Chief Judge (specially concurring).

I believe both that it was error to admit a prior written statement of the victim, which was inadmissible as an excited utterance, *State v. Justice*, 92 Ohio App. 3d 740, 637 N.E. 2d 85 (1994); *State v. Dixon*, 37 Wash. App. 867, 684 P.2d 725 (1984), or otherwise, see *Coluntino v. State*, 620 So. 2d 244 (Fla. 3d DCA 1993); *Reyes v. State*, 580 So. 2d 309 (Fla. 3d DCA 1991), and that portions¹ of the prosecutor's unobjected to final argument went

¹ For example:

There's nothing up my sleeves. Nothing like that. Just the evidence and the truth. You're the truth-seekers. 'We who labor here, seek only truth.' We know what the truth is. You saw him on the stand, the guy's a liar.

You have got to understand that he's lied to you. He barely looked you in the eye, because I can't say he lied right to your face, he's a liar.

* * *

The Defendant lied. He lied on the stand. He lied to the police and he lied when he pled not guilty in this case, because he's guilty.

* * *

Oh, this is my favorite part. Let's talk about the Defendant testifying. Now, well it's clear that the

well over the line. See *Card v. State*, 803 So. 2d 613 (Fla. 2001), cert. denied, 536 U.S. 963, 122 S.Ct. 2673, 153 L.Ed.2d 845 (2002); *First v. State*, 696 So. 2d 1357 (Fla. 2d DCA 1997). Nevertheless I concur in affirmance because I am convinced beyond a reasonable doubt by the record--which shows the defendant was apprehended by the investigating officers literally in the act of brutally beating his wife--that neither issue made any difference in the ultimate outcome. See § 924.33, Fla. Stat. (2003); *Goodwin v. State*, 751 So. 2d 537 (Fla. 1999); *State v. DiGuilio*, 491 So. 2d 1129 (Fla. 1986); Justice, 92 Ohio App. 3d at 740, 637 N.E. 2d at 85; Dixon, 37 Wash. App. at 867, 684 P.2d at 725.

Defendant lies when it's convenient.