For Publication

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	**CRIMINAL CASE NO. 04-0020E**
Plaintiff,	
v.	**SUPPLEMENTAL ORDER RE: *CRAWFORD* OBJECTION**
LUCIANO E. RANGAMAR,	
Defendant.	

I. INTRODUCTION

This matter came on for hearing March 22, 2005, at 9:00 a.m. regarding a "*Crawford*" objection to the admissibility of the victim's statement based on the victim's unavailability for trial pursuant to her departure from the CNMI. The Commonwealth was represented by John Eaton, Assistant Attorney General. The Defendant, Luciano E. Rangamar (hereafter "Defendant") was represented by Charlotte Tenorio, Public Defender.

On March 22, 2005, the Court issued a Minute Order denying the admissibility of the alleged victim's statements to Officer Quitugua because of her unavailability. The Court now expounds on

its March 22, 2005 decision.

II. BACKGROUND

On December 25, 2003, Officer Daniel Quitugua responded to a police call at the Central Garapan Village apartments. Upon arriving at the scene, Officer Quitugua found Ms. You Di Weng (hereafter "Weng"), the alleged victim, in the parking lot and asked, "what's the problem?" Weng responded, "that guy, that guy hold my hand use a gun and pointed the gun to my head." On December 7, 2004, prior to this matter coming to trial, Weng departed the CNMI and has not returned. The Commonwealth now seeks to introduce Weng's statements to Officer Quitugua under the excited utterance exception to the hearsay rule pursuant to Commonwealth Rule of Evidence 803(2).

III. DISCUSSION

In *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004), cited by both parties as precedence in this matter, the United States Supreme Court overturned a state court decision to admit statements into evidence made by the petitioner's wife despite her unavailability to testify due to the invocation of the spousal privilege. In its decision, the *Crawford* court engaged in a lengthy discussion of the historical context of the Confrontation Clause and the Sixth Amendment, noting that the purpose of the Sixth Amendment is to protect against the "use of *ex parte* examinations as evidence against the accused." *Crawford*, 541 U.S. at 50, 124 S. Ct. at 1363, 158 L. Ed. 2d at 192. Specifically, the *Crawford* court held that when the prosecution seeks to introduce a "testimonial," out-of-court statement into evidence against a criminal defendant, the Sixth Amendment's Confrontation Clause requires not only that the witness making the statement be unavailable, but that the defendant also must have had a prior opportunity to cross-examine the

witness. In so holding, *Crawford* overruled the Supreme Court's 1980 holding in *Ohio v. Roberts* that hearsay testimony does not generally violate the Confrontation Clause if the unavailable witness' statement falls within a firmly rooted hearsay exception or otherwise bears adequate indicia of reliability. 448 U.S. 56, 65, 100 S. Ct. 2531, 2538, 65 L. Ed. 2d 597, 607 (1980).

In overturning *Roberts*, the *Crawford* court examined the purpose behind the Confrontation Clause, concluding that it was meant to protect defendants from testimonial out-of-court statements. As such, even statements that fall within firmly rooted hearsay exceptions or bear particularized guarantees of trustworthiness, are not *per se* admissible and must be examined on a case by case basis. *Crawford*, 541 U.S. at 68, 124 S. Ct. at 1374, 158 L. Ed. 2d at 203. While *Crawford* failed to provide an explicit, comprehensive definition of "testimonial," it did provide a formulation of the "core class" of "testimonial" statements, including "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Id.*, 541 U.S. at 52, 124 S. Ct. at 1364, 158 L. Ed. 2d at 193.

Since *Crawford*, courts have taken a case by case approach in determining when a statement made to a police officer becomes "testimonial." In *United States v. Gonzalez-Marichal*, the court, following *Crawford*, held that where the material witness is no longer available to testify as to a plaintiff's nationality, it is a violation of the Confrontation Clause to introduce hearsay statements of that witness made to police officers even though the statement was "neutral and non-incriminating in the abstract" because the "statement . . . may well determine whether [d]efendant is incarcerated or released from custody." *Gonzalez-Marichal*, 317 F. Supp. 2d 1200, 1203 (S.D. Cal. 2004).

The Ninth Circuit has held that where a defendant's friend made statements regarding access

to a safe where drugs were found to police officers during the course of a search, the admission of the statements at trial is prohibited under the Confrontation Clause unless the declarant witness is shown to be unavailable and the defendant had an earlier opportunity to cross-examine the declarant. *United States v. Nielsen,* 371 F.3d 574, 581 (9th Cir. 2004). The more difficult distinction between what is and is not a testimonial statement arises when statements are made to police officers responding to a request for police presence at a crime scene.

In *Leavitt v. Arave*, 383 F.3d 809 (9th Cir. 2004), a crime victim called 911 to report a prowler in her home. When the police arrived, the severely frightened and shaking victim recounted that a prowler had entered her home and stated that she suspected the prowler was *Leavitt. Id.* at 814. At *Leavitt's* trial, over the defendant's objections, the court allowed the introduction of the now unavailable victim's statements as excited utterances. *Id.* In so doing, the court held that the victim was in no way being interrogated by the police, but rather had sought their help to end a frightening intrusion into her home. *Id.* at 830.

Still further, in *Lopez v. Florida*, 888 So. 2d 693 (Fla. Dist. Ct. App. 2004), police officers arrived at an apartment complex to investigate a reported kidnaping and assault. When the police officers arrived, the alleged victim and defendant were both in the parking lot, with the alleged victim visibly upset. When the alleged victim failed to appear at the defendant's trial, the court concluded that the alleged victim's statements qualified as excited utterances. However, on appeal, the appeals court held that while the statements were excited utterances, they were not admissible pursuant to *Crawford* because when the statements were made, there was a reasonable expectation that they would be used in a prosecution. *Id.* at 698-99.

In the present case, the statement at issue was an excited utterance, however, a determination

must be made whether the statement was also testimonial. In light of *Crawford* and subsequent case law, the statements made by Weng must be classified as testimonial. While Weng was upset, even "hysterical" when officers arrived, Weng was not in her apartment seeking police intervention in ending a frightening situation. Rather, Weng and the Defendant were both outside in the parking lot, apparently waiting for the police to arrive. When Officer Quitugua approached Weng, her first words were, "that guy, that guy," not "help me." Clearly, Weng's words could reasonably be expected to be used in prosecuting the defendant. Furthermore, it is not difficult to imagine a similar situation where a declarant is exaggerating or fabricating their version of the events. We do not know if that was Weng's intent, but it is undisputed that Weng made the statement in direct response to a question by Officer Quitugua, and that Weng did accuse the Defendant of a crime.

Additionally, the weapon allegedly used was recovered at the scene pursuant to the Defendant directing a police officer to look in his vehicle for the weapon. Under these facts, it appears that the situation was no longer one in which the alleged victim was purely seeking intervention in ending a frightening situation, but rather wished to have the Defendant arrested for his actions. In such a situation, it is conceivable that Weng's version of the events were relayed to Officer Quitugua with some amount of distortion. For example, if Weng was the initial aggressor, her interests would be served by laying the blame on the Defendant. In fact, court's have held that, "[a] statement made by a person claiming to be the victim of a crime and describing the crime is usually testimonial, whether made to the authorities or not." *United States v. Cromer*, 389 F.3d 662, 673 (6th Cir. 2004) (citations omitted). This Court reiterates that it does not know or make any judgements as to Weng's intent when speaking to Officer Quitugua, however, in keeping with the Supreme Court's holding in *Crawford*, the Court cannot introduce her statements without allowing

the Defendant an opportunity to cross examine the statements. Allowing the admission of Weng's statements would deny the Defendant his Sixth Amendment right to personally confront and cross-examine the person who knowingly accused him of a crime.

It should be noted that the Commonwealth was not without options in assuring that the alleged victim's statement could be used at trial. The Commonwealth could have invoked 6 CMC § 6501 and prohibited Weng's departure from the CNMI pursuant to her material witness status. Alternatively, the Commonwealth could have afforded the Defendant the opportunity to cross-examine the statements made by Weng via a pre-trial deposition pursuant to Commonwealth Rule of Criminal Procedure 15(a), which allows the testimony of a witness to be taken and preserved for use at trial when exceptional circumstances arise. The Commonwealth chose to do neither. In view of the *Crawford* decision, the Commonwealth may wish to consider such alternatives when appropriate in the future.

IV. CONCLUSION

For the reasons herein, the Court must hold that Weng's statements to Officer Quintigua were testimonial in nature and, therefore, are inadmissible against the Defendant.

SO ORDERED this 31st day of March 2005.

/s/_____
DAVID A. WISEMAN
Associate Judge