

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ELTON PUMPHREY,	§	
	§	No. 4, 2001
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. ID No. 0002014519
Plaintiff Below,	§	
Appellee.	§	

Submitted: November 8, 2001

Decided: January 9, 2002

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

ORDER

This 9th day of January, 2002, on consideration of the briefs of the parties, it appears to the Court that:

1) Elton Pumphrey was convicted, following a jury trial, of felony theft, conspiracy second degree and failing to submit to photographs and fingerprints. He argues on appeal that, because the victim of the theft did not testify, the trial court erred in excluding certain hearsay exculpatory evidence. We find this claim to be without merit and, accordingly, we affirm.

2) On February 23, 1999, Rocco Kovatto was driving a borrowed Nissan Maxima when he stopped to visit his friend, Buddy Sturgis. The two were drinking

when Kovatto noticed that a man named Danny Jahn was sitting in the car. Kovatto went outside to remove Jahn from the car and a fight erupted. Pumphrey and a woman nicknamed “Snow” joined Jahn in attacking Kovatto. One of the assailants took Kovatto’s car keys out of his pocket, and Pumphrey and Snow left in the Maxima. Pumphrey was arrested approximately one month later, driving the Maxima, which had been reported stolen by the owner.

3) The State planned to call Kovatto as a witness, but he failed to appear on the day of trial. After the trial court denied the State’s request for a continuance, the State decided to proceed without Kovatto. Pumphrey then complained that his defense would suffer without Kovatto’s testimony because Kovatto would have helped establish that Pumphrey had rented the car. The Court asked whether Pumphrey wanted a continuance, and Pumphrey said that he did not.

4) Pumphrey complains that his brother and cousin should have been allowed to testify that Pumphrey gave Kovatto money to rent the car from him. He acknowledges that their testimony would be hearsay, but says that the hearsay should have been admitted to make up for the fact that Kovatto was not available to be questioned about the rental arrangement. Apparently Kovatto would have denied

that he rented the car to Pumphrey, but Pumphrey then would have used his family's testimony to rebut Kovatto's claim.

5) To the extent that Pumphrey claims a violation of his Sixth Amendment right to confront accusatory witnesses, his claim fails because "no out-of-court statement by the absent witness was introduced into evidence."¹ Alternatively, Pumphrey contends that the court was obliged to allow hearsay testimony to "make up" for Kovatto's absence.

6) Because "[f]ew rights are more fundamental than that of an accused to present witnesses in his [or her] own defense,"² it is important that "the hearsay rule ... not be applied mechanistically to defeat the ends of justice."³ Still, there must be some corroboration of the proposed hearsay testimony to establish its trustworthiness.⁴ Pumphrey offers no corroboration or other indicia of trustworthiness for the witnesses' hearsay testimony, and the fact that the two witnesses are Pumphrey's relatives, if anything, suggests a lack of trustworthiness.

¹ *Wingfield v. State*, Del. Supr., No. 347, 1985, Moore, J. (May 9, 1986).

² *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

³ *Ibid.*

⁴ *Demby v. State*, Del. Supr., 695 A.2d 1152, 1160 (1997).

Under these circumstances, the trial court acted well within its discretion in excluding the hearsay.

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

BY THE COURT:

/s/ Carolyn Berger
Justice