

7-14-99

~

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

14

COMMONWEALTH OF THE NORTHERN  
MARIANA ISLANDS, )  
  
Plaintiff, )  
  
v. )  
  
JEFFERSON WEBBER O'CONNOR )  
  
Defendant. )

Criminal Case No. 98-269

JUDGMENT OF CONVICTION

I. PROCEDURAL BACKGROUND

This matter came before the Court for trial on June 22, 1999 and June 28, 1999, in Room 21 of the Guma Hustisia. Nicole C. Forelli, Esq. appeared on behalf of Plaintiff. Wesley M. Bogdan Esq. appeared on behalf of Defendant. The Court, having reviewed the memoranda, declaration and exhibits, having heard and considered the arguments of counsel, and being fully informed of the premises, now renders its written decision.

20

27

28

FOR PUBLICATION

*Handwritten notes:*  
AK  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## II. FACTS

On July 23, 1998, a criminal information was filed against Defendant Jefferson Webber O'Connor ("Defendant") in the CNMI Superior Court charging him with one count of assault and battery allegedly committed against his wife, Elisa Defunturom O'Connor ("Complainant").

A bench trial in this matter commenced on June 22, 1999, but was continued at the request of the parties to June 28, 1999. The Complainant did not appear at trial. However, at trial the government called Dr. Gregory Verville, the emergency room doctor who treated Complainant on the day of the assault. Over the Defendant's objection, the Court admitted Dr. Verville's testimony regarding Complainant's statement identifying Defendant as her assailant under Rule 803(4) of the Commonwealth Rules of Evidence after finding the statement reasonably pertinent to medical diagnosis or treatment.

At the conclusion of trial, the Court ordered the parties to brief the issue of whether Complainant's hearsay statement to Dr. Verville identifying Defendant as the assailant is sufficient to sustain a conviction.

## III. ISSUE

I. Whether Complainant's hearsay statement to her treating physician identifying Defendant as her assailant is sufficient to sustain a conviction?

2. Whether the government was required to make a showing of unavailability as a predicate for introducing Complainant's hearsay statements?

## IV. ANALYSIS

### 4. Hearsay statement

Defendant contends that Complainant's attribution of her injuries to an assault by Defendant was not pertinent to medical diagnosis or treatment.

Rule 803(4) of the Commonwealth Rules of Evidence provides:

"The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(4) Statements for purpose of medical diagnosis or treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms.

1 pain, or sensations, or the inception or general character of the cause or external source  
2 thereof insofar as reasonably pertinent to diagnosis or treatment.”

3 Com.R.Evid.803(4).<sup>1/</sup> Generally, statements attributing fault are not relevant to diagnosis or  
4 treatment. State v. Sims, 890 P.2d 521, 523 (Wash.App.Div.1 1995). In determining whether a  
5 hearsay identification under the medical exception should be admitted as substantive evidence, “[t]he  
6 critical inquiry is whether such statements are ‘made for purposes of medical diagnosis or treatment’  
7 and are ‘reasonably pertinent to diagnosis or treatment.’” United States v. George, 960 F.2d 97, 99  
8 (9<sup>th</sup> Cir. 1992). However, in cases of domestic abuse, courts have found that information attributing  
9 fault to be reasonably pertinent to medical diagnosis or treatment. State v. Woodward, 908 P.2d 23 1,  
10 238-239 (N. M. 1995)(statements by wife identifying defendant-husband as assailant to psychologist  
11 prior to her subsequent murder held admissible); Sims, 890 P.2d at 523-524 (statements by former  
12 live-in girlfriend identifying defendant-boyfriend as assailant to two physicians and a social worker  
13 held admissible); State v. Roberts, 775 P.2d 342, 343 (Or.App. 1989)(statements by girlfriend  
14 identifying defendant-boyfriend as assailant to emergency room physician held admissible).  
15 Accordingly, the Court finds Complainant’s statements to Dr. Verville identifying Defendant as her  
16 assailant admissible under Rule 803(4). Here, Dr. Verville testified that Complainant arrived at the  
17 emergency room of the Commonwealth Health Center near midnight on July 18, 1999. During her  
18 examination, Complainant told Dr. Verville that she had been assaulted by Defendant around 4:00  
19 a.m. that morning when Defendant threw her against a wall, kicked and slapped her. and pulled her  
20 hair. Dr. Verville further testified that it is important to know the relationship of the assailant to the  
21 victim for purposes of medical diagnosis and treatment because in cases of domestic abuse. the doctor  
22 looks more closely for fractures or other injuries that the patient might not be revealing out of fear  
23 or other reasons. Moreover, should the case involve domestic assault, special procedures are followed  
24 such as discharging the victim to a safe environment and social worker assistance.

25 With the admissibility issue resolved, the question here becomes whether viewing the evidence  
26 in the light most favorable to the State, a rational trier of fact could find the essential elements of the

---

27 <sup>1/</sup>The language of Com.R.Evid.803(4) is identical to that contained in FRCP 803(4).  
28

1 crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789,  
2 61 L.Ed.2d 560 (1979). Without Complainant's hearsay statements, the circumstantial evidence  
3 might be insufficient to prove beyond a reasonable doubt that the injuries resulted from an assault by  
4 the Defendant. However, when her statements to Dr. Verville are taken into consideration, the  
5 evidence satisfies the test set forth in Jackson. As such, the Court finds the evidence sufficient to  
6 support beyond a reasonable doubt Defendant unlawfully struck, beat, wounded or otherwise did  
7 bodily harm to Complainant, the essential elements of assault and battery. 6 CMC § 1202(a).

8 **B. Unavailability**

9 As an additional argument, Defendant challenges the admissibility of Complainant's statements  
10 under the Confrontation Clause of the Sixth Amendment on the grounds that the government made  
11 no showing that the Complainant was unavailable to testify.

12 Statements falling within a hearsay exception are ordinarily admissible under the Confrontation  
13 Clause if (1) the prosecution demonstrates the unavailability of the declarant, and (2) the statements  
14 are accompanied by "adequate indicia of reliability." Ohio v. Roberts, 448 U.S. 56, 66, 100 S.Ct.  
15 2531, 2539, 65 L. Ed.2d 597 (1980). However, the Roberts unavailability requirement does not apply  
16 to statements admitted under the exception for statements made for purposes of medical diagnosis or  
17 treatment. White v. Illinois, 502 U.S. 346, 354-357, 112 S.Ct. 736, 741-743, 116 L.Ed.2d 848  
18 (1992). Hence, the Court finds that the government was not required to make a showing of  
19 Complainant's unavailability as a predicate for introducing Complainant's hearsay statements.;

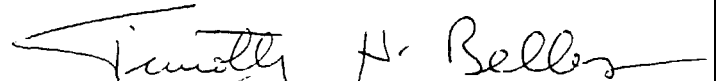
20  
21 /  
22  
23  
24 /  
25  
26 <sup>2</sup>It should be noted, however, that the government did indicate that the declarant was in the  
27 Philippines and had not returned to the CNMI on the date anticipated. This was the reason the trial was  
28 continued on June 22, 1999.

**V. CONCLUSION**

For all the reasons stated above, the Court finds Defendant Jefferson Webber O'Connor **GUILTY** of committing the crime of assault and battery against Elisa Defunturom O'Connor in violation of 6 CMC § 1202(a).

This matter is set for sentencing on September 15, 1999 at 1:30 p.m. to allow the probation office adequate time to prepare a pre-sentence investigation. The report shall be served on each counsel at least seven (7) days prior to the sentencing hearing.

So ORDERED this 14 day of July, 1999.

  
TIMOTHY H. BELLAS, Associate Judge