

**IN THE COURT OF COMMON PLEAS  
LYCOMING COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

<b>COMMONWEALTH</b>	:	
	:	
<b>v.</b>	:	<b>No.: 01-11,360</b>
	:	
<b>DAVID COLEMAN,</b>	:	
<b>Defendant</b>	:	

**OPINION IN SUPPORT OF ORDER  
IN COMPLIANCE WITH RULE 1925(A)  
OF THE RULES OF APPELLATE PROCEDURE**

Defendant appeals from this Court's Judgment of Sentence entered July 1, 2003 sentencing him to thirty-six to seventy-two months state incarceration for the offense of Delivery of a Controlled Substance (cocaine). Specifically, Defendant alleges that this Court during trial on May 8 and 9, 2003: (a) improperly disallowed Defendant to present evidence regarding the prior drug convictions of Carla Witherspoon; (b) improperly overruled his hearsay objection regarding the testimony of police officers as to the statements of the confidential informant; and (c) improperly overruled Defendant's asked and answered objection regarding Commonwealth's attempt to reinforce and unfairly accumulate testimony from a police officer. A summary of facts follows.

On December 19, 2000, Cpl. Wendell Morris of the Pennsylvania State Police went together with Steven Witherspoon, a confidential informant (CI), to the building where the Defendant lived. Morris and the CI made contact with the Defendant in Mr. Witherspoon's apartment. The CI and

Morris entered a bedroom just off the living room of the residence. The CI then left Morris there while he returned to the living room. Morris was able to overhear the CI and the Defendant negotiating a transaction for the purchase of cocaine. The CI returned to the bedroom and collected the agreed upon amount of money from Morris. The CI and the Defendant then briefly left the apartment. The CI returned a few minutes later and handed Morris five straw pieces of cocaine. On the basis of these facts, the Defendant was ultimately convicted by the jury of Possession With Intent to Deliver a Controlled Substance (cocaine), Delivery of a Controlled Substance (cocaine) and Possession of a Controlled Substance (cocaine).

I. **The Court properly refused to permit Defendant to present evidence regarding the prior drug conviction of Carla Witherspoon.**

Defendant first alleges this Court improperly denied him the opportunity to present evidence regarding a prior drug conviction of the wife of the CI, Carla Witherspoon. During trial, Defendant's attorney explained at sidebar that he wanted to use the prior conviction information to show that Ms. Witherspoon was involved in this transaction as well. (N.T., May 9, 2003, p. 30)

Any analysis of whether a piece of evidence was improperly excluded during the course of a jury trial must begin with a determination of whether the excluded piece of evidence was relevant to the matter to be determined by the jury. "An accused has a fundamental right to present defensive evidence so long as such evidence is relevant and not excluded by

an established evidentiary rule.” Commonwealth v. Eubanks, 511 Pa. 201, 209-210 (Pa. 1986). See also Chambers v. Mississippi, 410 U.S. 284, 302, 93 S.Ct. 1038 [1049], 35 L.Ed.2d 297 (1973); Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed.2d 330 (1972).

In this case, it is noted in the trial transcript that the prior conviction the Defendant sought to use is more than ten years old. (N.T. May 9, 2003, p. 30) Defendant’s attorney had already elicited from Trooper Tyson Havens of the Pennsylvania State Police, that Ms. Witherspoon had sold cocaine to him personally (Id., at p. 29), and that the sale at that time was for two “twenties”, or twenty-dollar straws of cocaine. The transaction between Ms. Witherspoon and Trooper Haven was therefore for the same substance as the one sold in this case, in the same amount and with the same type of packaging used in this case. (Id., p. 33). Additionally, Trooper Havens testified that the transaction between himself and Ms. Witherspoon occurred on September 5, 2000 (Id., p. 31), relatively close in time to the December 19, 2000 transaction with which Defendant was charged in this case.<sup>1</sup> In Defendant’s case and particularly in light of the evidence which was permitted regarding the transaction between Ms. Witherspoon and Trooper Havens, the Court found that a 1992 conviction for delivery of a controlled substance was not relevant to Defendant’s stated purpose of proving to the jury that Ms. Witherspoon, not the Defendant, was the person who provided the controlled substance in this case to the confidential informant.

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<sup>1</sup> The Court additionally notes that the transaction described by Trooper Haven led to a charge of Delivery of a Controlled Substance against Ms. Witherspoon which was ultimately nol prossed. (N.T. May 8, 2003, p. 3).

**II. The Trial Court properly overruled Defendant's hearsay objection regarding the testimony from police officers as to the statements of the confidential informant.**

The Defendant next contends that this Court erred by overruling his objection to the testimony of police officers as to the statements of the confidential informant. Defendant in his 1925(b) statement does not specifically point to the language of which he complains. The only instance which the Court is able to find in the transcript which might be the basis for this issue is Defendant's objection during the testimony of Corporal Wendell Morris of the Pennsylvania State Police. (N.T. May 9, 2003, p. 6.) The Court will therefore address this portion of the transcript. Specifically, the exchange in court was as follows:

**A. (CORPORAL MORRIS):** . . . (o)ur intent then was to buy cocaine from the defendant. Mr. Witherspoon was out of my view but I could hear the conversation that was going on in the front room. Mr. Witherspoon asked the defendant how many he could get for 100 –

**MR. POPLASKI:** Objection to the hearsay.

**THE COURT:** Commonwealth?

**MR. SIMMERS:** Judge, it's going to come in because it's the admission as far as – admission by this party as far as what he was going to deal, the dealing of coke, and how much he was going to pay for it.

**THE COURT:** Plus you have the opportunity (sic) to cross examine Mr. Witherspoon also on his initial testimony so the objection is overruled. Answer the question.

**THE WITNESS:** Then went to the front room and asked the defendant how many he could get for \$100.00.

**BY MR. SIMMERS:**

Q. Could you hear the conversation?

A. Yes, sir. The defendant then said six, meaning six pieces of crack cocaine or six bags of cocaine. Mr. Witherspoon then came back to me and asked me in the back room if six was okay, if purchasing six was okay. I then told him fine and then Mr. Witherspoon related he was going to try and get a better deal, see if he couldn't get seven. He went back to the front room and asked the defendant if he could get seven. The defendant related no, he couldn't. (N.T. May 9, 2003, pp. 6 – 7.)

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. Commonwealth v. Laich, 566 Pa. 19, 25 (Pa., 2001), citing Commonwealth v. Puksar, 559 Pa. 358, 740 A.2d 219, 225 (1999), cert. denied, 531 U.S. 829, 121 S. Ct. 79, 148 L. Ed. 2d 42 (2000). However, not all out-of-court statements are barred from admission into evidence during a trial as many fall within an exception to the hearsay rule. Extrajudicial statements, "which differ from confessions in that they do not acknowledge all essential elements of a crime, are generally considered

to qualify for admission into evidence under the party admission exception to the hearsay rule.” Commonwealth v. Bronshtein, 547 Pa. 460, 480 (Pa. , 1997). See also, Laich, supra., citing Commonwealth v. Smith, 518 Pa. 15, 540 A.2d 246, 257 (Pa. 1988). (“A defendant's out-of-court statements fall within the party admission exception to the hearsay rule.”) In fact, it has been held that “extrajudicial statements of a defendant may be used against him even though they contain no admission of guilt.” Smith, supra.

Here, the Court finds that the testimony submitted by Corporal Morris was a statement made by the defendant and, as such, it falls outside of the hearsay rule. Corporal Morris specifically testified that he could hear the conversation between the confidential informant and the Defendant. It is clear that the Commonwealth’s purpose in recounting the conversation was to present to the jury words spoken by the Defendant. Further, the Court finds that the statements of the confidential informant to which Corporal Morris testified were offered not for the truth of the matter asserted but only to put into context the responses made by the Defendant to the statements of the confidential informant. The confidential informant and the Defendant were having a conversation. The words of one make no sense without an understanding of the conversation as a whole. The Defendant’s responses are admissible under the party admission exception to the hearsay rule and therefore his objection was properly overruled.

**III. The Court properly overruled Defendant's asked and answered objection .**

Last, Defendant claims that this Court erred by overruling his "asked and answered objection". Again, the Defendant has not indicated where the ruling he appeals arises in the transcript of the trial. However, a review of the transcript reveals only one instance where the Defendant made an asked and answered objection. (N.T. May 9, 2003, p. 10). It closely follows the passage of the transcript quoted above.<sup>2</sup>

It has been held that "(t)he trial judges of this Commonwealth exercise broad powers while presiding at the trial of cases assigned to them. These powers include ruling on the admission or exclusion of evidence and controlling the scope of examination and cross-examination of witnesses. Such matters are committed to the sound discretion of the trial judge."

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<sup>2</sup> **Q. (by Mr. Simmers):** You said – you testified there was an agreement, I guess, for six –

**MR. POPLASKI:** Objection to leading.

**THE COURT:** Sustained, if you could refrain?

**MR. SIMMERS:** Sure.

**BY MR. SIMMERS:**

**Q.** What did you hear of the conversation? What did they say –

**MR. POPLASKI:** Objection, asked and answered.

**THE COURT:** Overruled.

**THE WITNESS (Corporal Morris):** When Mr. Witherspoon went to the front of the residence there, the defendant was seated and originally asked him if he could -- how many he could get for \$100.00. The defendant related six, he then left. Mr. Witherspoon then came back to me and asked me if six was okay. I then said six was fine. Mr. Witherspoon related he was going to try to get a better deal from the defendant.

He went back to the front area of the residence and said could he get seven. The Defendant said no, he couldn't get seven. He then came back to me and asked me for money. At that time I gave him \$100.00 in prerecorded currency. At that point he went back to the front room where the defendant was seated. They then both left the residence, returning a couple minutes later.

Commonwealth v. McEachin, 371 Pa. Super. 188, 194 (Pa.Super. 1988).  
See also Commonwealth v. Pittman, 320 Pa.Super. 166, 172-73, 466 A.2d  
1370, 1373 (1983); Commonwealth v. Niemetz, 282 Pa.Super. 431, 422 A.2d  
1369 (1980).

In this case, the Court finds that the questions of the Assistant District Attorney at the point where Defendant's objection was made were posed in response to Defendant's sustained objection that the Assistant District Attorney was leading his witness. The Assistant District Attorney responded by asking a much broader question to elicit the information he desired to present. The broader question was not leading, but caused the witness to reiterate information which he had already provided to the jury. The Court does not believe that any injury to the Defendant resulted from the Court's decision to overrule his objection. Indeed, the Defendant does not allege any injury or prejudice. Accordingly, the Court finds that Defendant's "asked and answered" objection was appropriately overruled.

By the Court,

\_\_\_\_\_  
Nancy L. Butts, Judge J.

Date: \_\_\_\_\_

xc: DA (WS)  
PD (JP)  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire