

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**ADRIAN MOLINA,
Defendant**

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**No. 1242-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion in Limine on November 26, 2012. A hearing on the Motion was held December 17, 2012.

Background

On May 26, 2012, Sergeant Detective Chris Kriner (Kriner) of the Old Lycoming Township Police Department observed a vehicle that he suspected of a DUI. Kriner could tell from following the vehicle that the individual driving the vehicle had a shaved head. In addition, Kriner testified that he passed the vehicle and also saw the Defendant driving. Kriner followed the vehicle as it went into a Sunoco A Plus gas station located on 1601 Dewey Ave, Williamsport. Kriner saw a Hispanic male with a bald head and a large beard exit the vehicle, pump gas, enter the gas station, exit the gas station, re-enter the vehicle, and drive away. While Kriner was following the vehicle he lost it momentarily. He was able to locate the vehicle outside a residence. Adrian Molina, Jr. (Defendant) was standing outside of the residence when Kriner arrived. The Defendant matched the description of the individual Kriner believed was operating the vehicle. After making contact with the Defendant, his girlfriend exited the residence and indicated that she was the operator of the vehicle.

On May 29, 2012, Kriner went to the Sunoco A Plus gas station that he witnessed the Defendant visit on the night of the alleged DUI. Kriner was given access to observe the

surveillance cameras from that night, which were streamed from a server from Sunoco's corporate headquarters. From the video, Kriner was able to confirm that he indeed witnessed the Defendant operate the vehicle after he left the Sunoco A Plus gas station. During the preliminary hearing in this matter, Kriner testified that he saw the surveillance video and that they showed the Defendant operating the vehicle as he left the gas station.

On October 26, 2012, after a status conference with the Honorable Marc F. Lovecchio, it was ordered that the Commonwealth provide "a copy of any and all video surveillance of the alleged events at the Sunoco." Subsequently, defense counsel was notified that the video was no longer available. At the hearing on this motion, Kriner testified that to obtain the video he would have to send a letter to Sunoco's corporate headquarters and that they would assess the matter before sending a recording from the surveillance video. Kriner stated that he was investigating another matter in October with a Sunoco gas station and learned that the videos were no longer available.

The Defendant was charged with Driving Under Influence of alcohol or Controlled Substance¹ and Driving Under the Influence with Highest Rate of Alcohol.² On November 26, 2012, the Defendant filed a Motion in Limine, which argued that any testimony in regards to the contents of the surveillance video should not be admissible under the Pennsylvania's Best Evidence rule.

Whether testimony on the contents of the surveillance video is not admissible under Pennsylvania's Best Evidence rule

At the hearing, the Defendant's argument relied upon the Best Evidence rule and Lewis.

¹ 75 Pa.C.S.A. § 3802(a)(1).

² 75 Pa.C.S.A. § 3802(c).

Commonwealth v. Lewis, 623 A.2d 355 (Pa. Super. 1993). The Pennsylvania Rules of Evidence states that “[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Pa.R.E. 1003. “The ‘best evidence’ rule limits the method of proving the terms of a writing to the presentation of the original writing, where the terms of the instrument are material to the issue at hand, unless the original is shown to be unavailable though no fault of the proponent.” Warren v. Mosites Construction Co., 385 A.2d 397 (Pa. Super. 1978).

In Lewis, the Defendant and an assailant entered a Sears store and picked up several radio “walkmans.” Id. at 356. The Defendant left the store without making an attempt to purchase the merchandise. Id. An Officer arrived and viewed a security tape of the defendant taking the merchandise. Id. At trial, the Officer testified regarding the contents of the tape, without the tape being introduced. Id. at 357. The Superior Court of Pennsylvania found that the Best Evidence rule applies to testimony regarding the contents of videotapes, when the tape itself has not been admitted into evidence. Id. at 358. The Superior Court ruled that “whatever knowledge [the officer] possessed was gained from his viewing of the videotape. Thus, the original tape should have been produced.” Id. at 359.

Distinguishing the facts in Lewis is Steward, where a security officer observed through a security camera the defendant contemporaneously committing the crime of retail theft.

Commonwealth v. Steward, 762 A.2d 721 (Pa. Super. 2000). The Superior Court stated that “Lewis does not control in this case because unlike the witness in Lewis, [the security officer] had the ‘opportunity to observe appellant’s action contemporaneously with the crime.’ The Sanction appellant sought, the exclusion of [the security officer’s] testimony, simply was not

required where, as here, the witness observed the theft himself and did not rely on the videotape.” Id. at 723; see also Commonwealth v. Townsend, 747 A.2d 376, 380 (Pa. Super. 2000) (determining that the Best Evidence rule is not applicable when the contents of the writing were merely part of the evidence used by the Commonwealth to prove its contents); Commonwealth v. Harris, 719 A.2d 1049 (Pa. Super 1998) (finding that where testimony from an officer makes the contents of documentary evidence mere cumulative evidence, the Best Evidence rule does not apply); Durkin v. Equine Clinics, Inc., 459 A.2d 417 (Pa. Super. 1983) (“Proof of its content was not necessary in order to make a case or provide a defense. . . . [t]herefore, the Best Evidence Rule does not apply.”); Nelson v. State Bd. of Veterinary Med., 938 A.2d 1163, 1171 (Pa. Commw. 2007) (“The best evidence rule does not apply where the matter to be proved exists independently of the writing.”).

Here, Kriner testified that he saw the Defendant driving the vehicle at numerous times. Kriner stated that he saw him when he past his vehicle and that he could see a bald man driving the vehicle while he was following him. Moreover, Kriner personally witnessed the Defendant exit his vehicle at the gas station and re-enter it after paying for his gas. The surveillance video of the Defendant pumping gas and driving away from the gas station merely corroborates the direct eyewitness testimony given by Kriner. In addition, the evidence of the video would be considered as cumulative evidence and is not relied upon by Kriner’s observations of that night; therefore the Best Evidence rule is not applicable for the contents of the surveillance video.

In addition, the Best Evidence rule is not applied when the original is shown to be unavailable though no fault of the proponent. Here, the Commonwealth was never in custody of the video but only observed the video being streamed off a server from Sunoco’s corporate headquarters. Kriner testified that a written request needs to be sent to the corporate

headquarters to obtain a physical copy of the recording. Neither the Commonwealth nor the Defendant attempted to request a copy of the recording until the Defendant requested a copy from the Commonwealth on October 26, 2012. Kriner testified that he attempted to obtain a copy but was told that the recording was no longer available. As the Commonwealth never had a copy of the recording, they were not at fault for its unavailability. The Defendant and his counsel had equal opportunity to obtain the recording and/or request a copy earlier as they were aware of it at the preliminary hearing.

ORDER

AND NOW, this _____ day of January, 2013, based upon the foregoing Opinion, the Court finds that Pa.R.E. 1003 and the Best Evidence rule are not applicable to the facts of this case. Therefore, the Defendant's Motion in Limine is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (MK)
PD (RC)