

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-527-2010
 :
 vs. :
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 :
 KARRIE CROUCHER, : Motion in Limine
 Defendant :
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OPINION AND ORDER

Defendant is charged by Information filed on April 29, 2010 with one count of aggravated assault, one count of simple assault and one count of endangering the welfare of children. On November 2, 2012, the Commonwealth filed a motion in limine. Among other requests, the Commonwealth sought an Order permitting it to introduce during Defendant's trial in this matter, transcripts from Children and Youth hearings that were held on December 16, 2009 and January 13, 2010.

By Order of Court dated January 8, 2013, the Court denied the Commonwealth's Motion to Admit Transcripts. The Court concluded that the statements made by Defendant did not constitute admissions but if they did, they were not relevant. The Court further concluded that if the statements constituted admissions and had some probative value, such probative value was substantially outweighed by the potential for prejudice. Finally, the Court noted that if the statements were admissions and relevant, they would cause the jury to speculate, be distracted and confused. This Order was docketed on January 8, 2012, but the Commonwealth contends that it never received a copy of it.

The case proceeded to a jury trial on April 15, 2013. During the trial, the Commonwealth did not seek to introduce the transcripts at issue. On April 17, 2013, upon the

Court being advised by the jury that they were hopelessly deadlocked and that no continued deliberations would result in a unanimous verdict, the Court declared a mistrial.

On January 2, 2014, the Commonwealth filed a motion in limine again requesting that the transcripts be admitted. The Commonwealth contended in its motion that the Superior Court reversed the trial court's denial of the motion in limine in co-defendant Christopher Ingram's case.

Argument on the Commonwealth's motion in limine was held before the Court on January 27, 2014. The Commonwealth contended that pursuant to the Superior Court's decision in Commonwealth v. Ingram, Sr., No. 2190 MDA 2012 filed on December 10, 2013, the transcripts are admissible. In Ingram, the Superior Court concluded that the statements and/or terms made part of the stipulation were admissible because Mr. Ingram adopted the stipulation as true. Further, the Court concluded that the transcripts and stipulation, which established that the child suffered injuries while in the care and control of Mr. Ingram and Defendant, were relevant and probative to identify the child's assailant.

Defendant argued that because the Commonwealth failed to appeal the Court's pretrial decision prior to the April 2013 trial, the Commonwealth waived any entitlement to relief. In support of its argument, the Defendant relies upon the Supreme Court decision in Commonwealth v. Gordon, 673 A.2d 866 (Pa. 1996).

The Commonwealth argued that it did not waive any request to have the Court reconsider its prior ruling by virtue of its failure to appeal, because it never received a copy of the order.

The Commonwealth's motion in limine originally filed on November 2, 2012 was disposed of by Order of Court dated January 8, 2013. The trial was subsequently held and unfortunately a mistrial occurred.

If a jury is unable to reach a verdict, the Court may grant a mistrial on the grounds of manifest necessity. Commonwealth v. Curry, 472 A.2d 1162 (1984).

The general rule is that when re-prosecution subsequent to the grant of a motion for mistrial is not barred, the proceedings revert to a pretrial status as though the original "trial had never occurred."

Commonwealth v. Mulholland, 549 Pa. 634, 702 A.2d 1027, 1035-36 (1997), quoting Commonwealth v. James, 506 Pa. 526, 486 A.2d 376, 379 (Pa. 1985).

While the proceedings revert to "a pretrial status," not all of the Court's prior pretrial rulings are subject to re-litigation. Mulholland, 702 A.2d at 1036, citing Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995). More specifically, pretrial rulings relating to legal questions determinative of the "law of the case" should not be reopened. Mulholland, supra, citing Starr, 664 A.2d at 1331. A reconsideration of an earlier ruling is "allowed only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter or where the prior holding was clearly erroneous and would create a manifest injustice if followed." Starr, 664 A.2d at 1332.

In this particular case, there clearly has not been a substantial change in the facts or evidence giving rise to the dispute in the matter. Moreover, and despite the Commonwealth's claim to the contrary, there has not been an intervening change in the

controlling law. While the Superior Court reversed this Court's ruling, it did so in an unpublished, non-precedential memorandum decision, which did not involve the defendant in this case. Therefore, the Superior Court's decision cannot be relied upon by any party.

Superior Court Internal Operating Procedures §65.37, 42 Pa.C.S.A.

The determinative issue is whether the prior holding was clearly erroneous and would create a manifest injustice if followed.

An extremely strong argument can be made that the Court's prior ruling denying the Commonwealth's motion in limine was clearly erroneous. The transcripts at issue contain adoptive admissions by Defendant. They are admissible against her under the party-opponent exception to the hearsay rule. Pa. R. E. 803 (25) (D). Moreover, the adoptive admissions establish that the child suffered his injuries while in the care and custody of Defendant and Mr. Ingram and are relevant and probative to identify the child's assailant.

An abuse of discretion requires a finding of misapplication of the law, a failure to apply the law or judgment by a court that exhibits bias, ill will, prejudice, partiality, or was manifestly unreasonable, as reflected by the record. Commonwealth v. Montalvo, 986 A.2d 84, 94 (Pa. 2009)(citations omitted).

Upon further consideration of the law concerning statements or admissions of a party opponent, the court finds that it either abused its discretion by misapplying the law or its prior holding was clearly erroneous.

In addition, the law of the case doctrine does not appear to be an inexorable command or even a constitutional requirement. It is a policy, which promotes finality and

efficiency in the judicial process. Neither finality nor efficiency, however, would be furthered by blind adherence to the Court's prior ruling. Instead, failing to alter the prior ruling would only lead to a successful appeal and a further delay in the trial of this case.

This Court has the discretion, and perhaps even the duty, to consider the issue anew in circumstances where a manifest injustice may follow. In this particular case, reconsideration is necessary to obtain consistent results in similar cases and to serve the interest of justice. This Court cannot allow two separate trials to proceed with two different evidentiary rulings when they essentially involve the same facts. To do so would be clearly erroneous and create a manifest injustice.

Defendant's waiver argument is without merit. Defendant has not provided any case law or statutory support for its argument. As argued by the Commonwealth, the Supreme Court's decision in Gordon may in fact support the Commonwealth's position. The nature of a motion in limine allows it to be reconsidered or modified, even during trial. Gordon, 673 A.2d at 869. Therefore, the fact that the Commonwealth either chose not to appeal or failed to appeal due to not receiving a copy of the Order is not determinative under the facts and circumstances of this case.

Accordingly, the Court will enter the following Order granting the Commonwealth's motion in limine.

ORDER

AND NOW, this ___ day of February 2014, following a hearing and argument on the Commonwealth's motion in limine filed on January 2, 2014, said motion is **GRANTED**. The portions of the transcripts containing the stipulation and/or admission that the minor child suffered his injuries while in the care and custody of Defendant and Mr. Ingram are deemed to be admissible. More specifically, the Commonwealth may present those portions of the transcripts and the stipulation that conclude "there were injuries to the child while the child was in the custody, care, and control of the parents" and that those injuries, as identified by Dr. Belino in the hearing on December 16, 2009, were the basis for dependency.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Robert Cronin, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file