

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-527-2010
 :
 KARRIE CROUCHER, :
 Defendant :

OPINION AND ORDER

This matter came before the court on March 4, 2014 for an argument on the Commonwealth's motion limine filed on February 20, 2014.

The Commonwealth's motion consists of two parts – a request for clarification of the court's opinion and order dated February 12, 2014 regarding the portions of the December 16, 2009 and January 13, 2010 dependency transcripts that the court will permit the Commonwealth to introduce at trial; and a request for an order precluding Defendant from introducing the comment made by Christopher Ingram to the effect "I guess that makes me suspect number one" in response to suggestions that he had a criminal record and therefore might be responsible for the child's injuries.

The Commonwealth seeks to introduce the portions of the December transcript that note Defendant was present and those where Dr. Bellino describes the child's injuries. The parts of the January transcript that the prosecutor seeks to introduce are the portions where Defendant is placed under oath and the portion where she stipulates that the child sustained the injuries described by Dr. Bellino while the child was in the care, custody or control of his parents (Defendant and Christopher Ingram).

At the argument, defense counsel objected to the Commonwealth introducing

the dependency transcripts on the following grounds: the transcripts will be cumulative to Dr. Bellino's trial testimony; the testimony was for a dependency proceeding which has a lower burden of proof than the beyond a reasonable doubt standard for a criminal trial; Defendant was not advised of her Miranda rights; Defendant was not told that her stipulation or the transcripts would be used in the criminal trial; and Defendant did not admit criminal responsibility.

To the extent defense counsel seeks to exclude the transcripts in their entirety, he should have raised these issues at the argument held on January 27, 2014. The court already ruled that certain facts and admissions contained in the transcripts were admissible in its Opinion and Order dated February 12, 2014. The Commonwealth's current motion in limine seeks clarification of that ruling with respect to specific pages of the transcripts.

The court grants the Commonwealth's request to present the following portions of the transcript: January 13, 2010 (Part 2), page 4, line 15-20, and page 6, lines 3-9; December 16, 2009, page 20, lines 12-18; December 16, 2009, page 30, lines 9-19; December 16, 2009, page 35, line 7 through page 36, line 2; December 16, 2009, page 43, line 2 through 24; and the portion of the January 13, 2010 transcript where Defendant is placed under oath.

Prior to trial, defense counsel shall notify the Commonwealth and the court of any portions of these transcripts that the defense wishes to introduce during trial.

Defendant is free to present evidence to challenge the weight that the jury should attribute to the stipulation and the transcripts, which may include information

regarding the lower burden of proof at a dependency proceeding, any explanation Defendant may have for entering into the stipulation, that she was not told that her stipulation or the transcripts could be used in her criminal trial, and that she did not admit criminal responsibility.

Defendant, however, may not introduce evidence regarding the lack of Miranda warnings. Miranda warnings are only required prior to custodial interrogation. Contrary to defense counsel's arguments, Defendant clearly was not in custody at the time she entered the stipulation. Defendant was released on \$50,000 unsecured bail on December 3, 2009. The hearings occurred on December 16, 2009 and January 13, 2010. Regardless whether the prosecutor was present to observe the proceedings, the Commonwealth was not a party to the proceedings and did not control Defendant's arrival to or departure from the hearings in any manner. The court also notes that Defendant was represented by counsel and was under no obligation to enter into the stipulation or answer any questions. She chose to enter the stipulation so that she could have supervised visitation with the child.

The second portion of the Commonwealth's motion in limine seeks to preclude Defendant from introducing Mr. Ingram's statement- "I guess that makes me the prime suspect"- or a statement to that effect, which was made after his prior criminal record was mentioned. The Commonwealth argues that this statement is inadmissible hearsay. Defense counsel contends the statement is admissible under the hearsay exception for statements against interest.

Rule 804(b)(3) of the Pennsylvania Rules of Evidence sets forth the hearsay

exception for statements against interest as follows:

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

...

(3) *Statement Against Interest.* A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

Pa.R.E. 804(b)(3).

Mr. Ingram's comment does not qualify as a statement against interest. Mr. Ingram did not admit any facts or circumstances regarding how the child was injured; he merely acknowledged that he had a prior criminal record which would make him the "prime suspect" in the eyes of the authorities. See Commonwealth v. Brown, 52 A.2d 1149, 1179-1182 (Pa. 2012)(only the portions of an out-of-court statement, when examined in the context in which it was made as well as in conjunction with the surrounding circumstances, that so far tends to subject the declarant to criminal liability that a reasonable person would not have made the statement unless believing it to be true are admissible under Rule 804(b)(3)).

Accordingly, the following order is entered:

ORDER

AND NOW, this ___ day of March 2014, the court GRANTS the Commonwealth's motion in limine.

The Commonwealth will be permitted to introduce the following portions of the dependency transcripts: January 13, 2010 (Part 2), page 4, line 15-20, and page 6, lines 3-9; December 16, 2009, page 20, lines 12-18; December 16, 2009, page 30, lines 9-19; December 16, 2009, page 35, line 7 through page 36, line 2; December 16, 2009, page 43, line 2 through 24; and the portion of the January 13, 2010 transcript where Defendant is placed under oath.

If defense counsel wishes to introduce any additional portions of the dependency transcripts, he must notify the Commonwealth and the court prior to the start of trial.

The court precludes Defendant from introducing Mr. Ingram's statement to the effect "I guess that makes me the prime suspect", unless Mr. Ingram testifies at trial.

By The Court,

Marc F. Lovecchio, Judge

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