

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA
COMMONWEALTH

: No. CP-41-CR-650-2016

:

:

DOMINIC McLAURIN

:

Appellant

:

Rule 1925(a) Opinion

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

Appellant Dominic McLaurin (hereinafter McLaurin) was charged by Information filed on April 28, 2016 with possession with intent to deliver controlled substances and related offenses. Following a jury trial, he was found guilty of possession with intent to deliver a controlled substance (.03 grams of heroin), an ungraded felony; possession of a controlled substance (.03 grams of heroin), an ungraded misdemeanor; possession of drug paraphernalia, an ungraded misdemeanor; and criminal use of a communications facility, a felony of the third degree.

On May 2, 2018, the court sentenced McLaurin to three (3) to ten (10) years' incarceration with respect to the possession with intent to deliver charge and a concurrent term of two (2) to five (5) years' incarceration with respect to criminal use of a communication facility.¹

The proceedings following McLaurin's sentencing were turbulent. A notice of appeal was filed on May 14, 2018. By Order dated May 15, 2018, the court directed

¹ Possession of a controlled substance merged with possession with intent to deliver. With respect to the paraphernalia charge, the court sentenced McLaurin to guilt without further punishment.

McLaurin to file a concise statement of errors complained of on appeal. On June 5, 2018, McLaurin filed his concise statement. By Order of the Superior Court dated July 9, 2018, the appeal was dismissed. By Order dated July 23, 2018, the dismissal order was vacated and the appeal was reinstated. McLaurin was given until August 2, 2018 to file a docketing statement. Apparently, the docketing statement was not filed in time and the appeal was dismissed by Order of August 10, 2018. Yet again, however, the appeal was reinstated by Order dated August 23, 2018.

McLaurin asserts two issues on appeal. First, he asserts that the lower court erred in denying his motion to suppress. Second, he argues that the court erred in permitting the introduction of evidence relating to McLaurin's intake at the Lycoming County Prison after he was arrested.

With respect to McLaurin's first issue, the court relies on its Opinion and Order filed on April 12, 2017. The Opinion and Order details the facts of the case, the applicable law and the reasoning behind the court's decision to deny McLaurin's motion to suppress.

With respect to McLaurin's second issue, on December 28, 2017, the Commonwealth filed a Notice of Intent to Introduce Certified Records. Specifically, pursuant to Pennsylvania Rule of Evidence 902 (11), the Commonwealth placed the defendant on notice that it intended to introduce the certified medical admission form and associated documentation from the Lycoming County Prison.

The Commonwealth added that the referenced records "relate to the intake of Dominic McLaurin into the Lycoming County Prison."

On January 16, 2018, McLaurin filed a motion to preclude the introduction of

the records and documents on the basis of hearsay, relevance and “being overly prejudicial.”

By way of brief procedural background, McLaurin had first been scheduled for trial in another case (CR-640-2016) in September of 2017. McLaurin filed a motion to preclude the same records and the motion was granted. This court specifically noted that it would not allow the medical admission forms from the Lycoming County prison to be admitted on the basis of the certification from the Deputy Warden. The court had several concerns including the relevancy of the documents, their prejudicial impact, the jury engaging in speculation and the timeliness of providing of the information to McLaurin.

In response to the court’s granting of McLaurin’s motion to preclude, the Commonwealth filed an interlocutory appeal and that case did not proceed to trial.

In this case, the Commonwealth tailored its request and presented the testimony of Cynthia Mann, a nurse at the Lycoming County prison.

Nurse Mann testified that she had been employed at Lycoming County Prison on March 1, 2016 when McLaurin was first incarcerated. Her duties included conducting a basic assessment of inmates once they were booked into the prison, interviewing them regarding prescription medications, questioning them regarding illicit substances, verifying medical conditions and determining what medical needs must be met.

She performed the intake on McLaurin when he was booked into the prison on March 1, 2016. She identified his medical admission form. Mr. McLaurin indicated to her, among other things, that he denied “street drug use.” He was, however, taking prescribed Percocet for an inguinal hernia which caused significant back pain.

Because Percocet is an opiate, Nurse Mann placed McLaurin on detox observation to determine if he was symptomatic of any detox symptoms and to then treat

them appropriately. Further, he was restricted to the bottom bunk because of his back problems. Nurse Mann was then shown Commonwealth Exhibit 3 which she described as a detox observation record. She initiated the form because she performed the intake. She did the initial set of vital signs when she saw him and wrote on the form his responses to whether he was having any symptoms. She verified that a zero with a slash through it was her way of indicating that McLaurin had no symptoms. She verified that McLaurin had no detox symptoms or complaints from March 1, 2016 when he was first booked into the prison until March 4, 2016.

On cross-examination, she elaborated on what she asked McLaurin with respect to street drugs. She described her questioning as “pretty scripted.” She gave examples of street drugs and asked if any street drugs were used.

As indicated previously and different from McLaurin’s other case where the Commonwealth sought to introduce a host of records without supporting testimony, Nurse Mann testified and the Commonwealth introduced only the medical admissions form and the detox observation record at McLaurin’s trial in this case.

During the argument on the admissibility, defense counsel objected on the basis of hearsay, relevance and prejudice. He argued that it would be “hearsay within hearsay” although he conceded that it would be McLaurin’s admission regarding what he had said to [Nurse Mann] which she then placed on [the] form.” As to relevancy, he argued that it was “two months after the fact.”

The court overruled the objections, noting that the timing of the statement was an issue of weight, not admissibility and that McLaurin’s concerns could be addressed in varied ways such as through cross-examination, reference to other portions of the records or

the testimony of McLaurin.

“The admission of evidence is solely within the discretion of the trial court, and a trial court’s evidentiary rulings will be reversed on appeal only upon an abuse of that discretion.” *Commonwealth v. Woodard*, 634 Pa. 162, 129 A.3d 480, 494 (2015)(quoting *Commonwealth v. Reid*, 627 Pa. 151, 99 A.3d 470, 493 (2014)).

Generally, all relevant evidence is admissible, and evidence is relevant if it has “any tendency to make a fact more or less probable than it would be without the evidence.” *Commonwealth v. Murphy*, 182 A.3d 1002, 1005 (Pa. Super. 2018); Pa. R. E. 401-02.

In this particular case, the Commonwealth asserted that McLaurin’s admission during his intake to the prison on March 1, 2016 tended to prove that on January 6, 2016 the defendant did not possess the heroin for his personal use or consumption.

The court agreed with the Commonwealth. The defendant was charged with possession of a controlled substance, possession of drug paraphernalia, possession with intent to deliver a controlled substance and criminal use of a communications facility. The Commonwealth was required to prove McLaurin’s intent. The Commonwealth was also called upon to essentially disprove McLaurin’s assertion that he possessed the items not for distribution but for personal use. Testimony that he denied using street drugs less than two months later has a tendency to make those facts more or less probable than they would be without the evidence.

Additionally, because the evidence against the defendant was circumstantial, this additional piece of circumstantial evidence became even more relevant. While the court agreed that the approximate two month lapse in time created an issue, that issue went to the

weight of the testimony and not its admissibility.

The court may exclude relevant evidence if its probative value is outweighed by a danger of unfair prejudice. *Murphy*, supra; Pa. R. E. 403. “Unfair prejudice” means a tendency to suggest a decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially. Pa. R. E. 403, comment; *Commonwealth v. Gad*, 2018 PA Super 160, 2018 WL 2772602, *2 (June 11, 2018). The admission of evidence becomes problematic only when its prejudicial effect creates a danger that it will stir such passion in the jury as to sweep them beyond a rational consideration of guilt or innocence of the crime on trial. *Gad*, *id.* “Evidence will not be prohibited merely because it is harmful to the defendant. [E]xclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based on something other than the legal propositions relevant to the case.” *Id.* at *4 (quoting *Commonwealth v. Talbert*, 129 A.3d 536, 539 (Pa. Super. 2015)).

McLaurin baldly asserted a claim of prejudice but did not specify the grounds for such. Given the testimony of Nurse Mann and the two records admitted into evidence, the court saw no merit to McLaurin’s prejudice argument. While the evidence was harmful to McLaurin’s position, the evidence pertained to the legal propositions relevant to the case. Therefore, the evidence was not unduly or unfairly prejudicial.

Lastly, McLaurin asserts that the evidence was inadmissible hearsay.

Hearsay means a statement that the declarant does not make while testifying at the current trial and a party offers in evidence to prove the truth of the matter asserted. Pa. R. E. 801(c). Hearsay evidence is not admissible except as provided by rules or by statute. Pa. R. E. 802.

In this particular set of circumstances, the Commonwealth introduced evidence that McLaurin told Nurse Mann that he did not use any street drugs, including heroin, and that he had no detox symptoms from March 1 to March 4 of 2016. The purpose, as set forth above, was to prove that McLaurin's possession of the heroin was not for personal use but to distribute to others.

McLaurin's denial of symptoms and denial of using street drugs was offered to prove the truth of the matters asserted. Clearly, the statements constituted hearsay. However, hearsay is admissible when provided by rule or statute. Pa. R. E. 802. One exception to the hearsay rule is a statement offered against an opposing party that was made by that party. Pa. R.E. 803 (25) (A).

The reason for the admission of a party's statement is not that it is especially reliable, but rather, because the right to cross examination is not lost; i.e., the party is present to take the stand and explain his statement. *DeFrancesco v. Wester Pennsylvania Water Company*, 329 Pa. Super. 508, 478 A.2d 1295, 1302 (1984).

Clearly, McLaurin's statements to Nurse Mann constituted admissions and are exceptions to the hearsay rule.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)