

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

<b>COMMONWEALTH</b>	<b>: No. CR-695-2024</b>
<b>vs.</b>	<b>:</b>
<b>DAWUD ROGERS,</b>	<b>: Opinion and Order re</b>
<b>Defendant</b>	<b>: Commonwealth's Motion in Limine</b>
	<b>: To Introduce Decedent's Statements</b>
	<b>: Re Altercation Between Decedent and</b>
	<b>: Defendant on or about December 22, 2016</b>

**OPINION AND ORDER**

This matter came before the court on September 8, 2025 for a hearing and argument on the Commonwealth's Motion in Limine to introduce evidence of statements the alleged victim/decedent made to his girlfriend and his mother about an altercation that he allegedly had with Defendant on December 22, 2016, after 11:00 p.m. at the Valley Inn over a gambling debt from playing pool. This incident occurred about one week before the victim was shot outside the Penn State Auto repair shop on Boyd Street in Williamsport, Lycoming County, Pennsylvania.

The Commonwealth contends that this evidence is admissible as a statement against interest under Pa.R.E. 804(b)(3) and is relevant to show that Defendant had a motive to kill the victim on December 30, 2016. The victim is unavailable to testify because he is deceased. The Commonwealth contends that the victim's statements are reliable because he was treated for a fractured left wrist and Defendant was treated for injuries to his face and head at UPMC-Williamsport Hospital in the early morning hours on December 23, 2016. Defendant told medical personnel that he was robbed, beaten and knocked unconscious by a group of men. Although victim told medical personnel that his wrist was broken in an accident, his statements to his mother and girlfriend indicated that he sustained the injury when he knocked out Defendant. The Commonwealth contends that the victim's statements

were corroborated by text messages he sent to his girlfriend, a video of Defendant lying on the ground in a parking area and Detective Sorage's testimony that the parking area is outside the Valley Inn. The Commonwealth contends that the victim's text messages to his girlfriend also show that the victim realized that his admissions to assaulting Defendant were statements that would subject him to criminal liability and therefore against his penal interest.

Defense counsel contends that the evidence is not admissible because it is not reliable or trustworthy. He also contends that the statements are not against the victim's penal interest since he is deceased and cannot be prosecuted. Despite having the opportunity to do so, the victim did not make these statements to medical personnel at UPMC or to police who were investigating the incident. He allegedly made these statements to his mother and his girlfriend, who are not unbiased. The statements were not made to police. The video does not show the actual assault, but only Defendant lying in a parking lot. Furthermore, Detective Sorage's testimony is not corroborative because he examined the parking lot nine years after the alleged assault and cannot say that the lot is in the same condition as it was nine years ago.

## **DISCUSSION**

Rule 804(b)(3) states:

(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). There are four criteria which must be met: (1) the declarant made a statement; (2) the declarant was, at the time of trial, unavailable as a witness; (3) the statement “at the time of its making ... so far tended to subject the declarant to ... criminal liability ... that a reasonable person in the declarant's position would not have made the statement unless believing it to be true;” and, as this is a criminal matter (4) “corroborating circumstances clearly indicate the trustworthiness of the statement.” *Commonwealth v. Brown*, 617 Pa. 107, 168, 52 A.3d 1139, 1176 (2012). In determining the reliability or trustworthiness of the statement, the court must refer to the circumstances in which the declarant gave the statement, and not by reference to other corroborating evidence at trial. *Commonwealth v. Cascardo*, 981 A.2d 245, 258 (Pa. Super. 2009), appeal denied, 12 A.3d 750 (Pa. 2010)(citing *Commonwealth v. Robins*, 571 Pa. 248, 812 A.2d 514 (2002)). The court should start with the basics “of when and where the statements were made, to whom they were made and what was said”, including but not limited to

the circumstances under which the statements were uttered, including the custodial/non-custodial aspect of the setting and the identity of the listener; the contents of the statement, including whether the statements minimize the responsibility of the declarant or spread or shift the blame; other possible motivations of the declarant, including improper motive such as to lie, curry favor, or distort the truth; the nature and degree of the “against interest” aspect of the statements, including the extent to which the declarant apprehends that the making of the statement is likely to actually subject him to criminal liability; the circumstances or events that prompted the statements, including whether they were made with the encouragement or at the request of a listener; the timing of the statement in relation to events described; the declarant's relationship to the defendant; and any other factors bearing upon the reliability of the statement at issue.

*Cascardo*, 981 A.2d at 258-59 (quoting *Robins*, 571 Pa. at 267, 812 A.2d at 525-26).

The declarant (victim) is unavailable as a witness because he was shot and killed

about a week later, allegedly by Defendant. If it were not for the declarant's death about a week later, the statements could have subjected the declarant to prosecution for offenses such as aggravated assault, simple assault, and recklessly endangering another person.

The statements were made shortly after the assault occurred around the time that both the declarant and Defendant were being treated for their injuries. The statements were made to the declarant's mother shortly after the incident occurred and before the declarant was treated at the hospital. The statements to the declarant's girlfriend were made during and/or after the declarant was treated at the hospital.

The statements were made in a non-custodial setting and did not shift the blame to others.

The declarant was aware that his statements could actually subject him to criminal liability which could explain why he did not make them to medical personnel or to the police at the hospital; instead, he claimed his injury was an accident. Moreover, he acknowledged the possibility of criminal liability when he wrote "I hope this f\*\*\* n\*\*\*\*\* don't tip and get me booked".

The court rejects defense counsel's argument that the statements were not against the declarant's penal interest because he can no longer be prosecuted for the assault on Defendant. According to the Rule, the relevant inquiry is whether they were against the declarant's interest **at the time the statements were made**. The statements admitting to the assault of Defendant were against the declarant's interest when they were made. The declarant/victim was alive and the police were at the hospital investigating the incident. Defendant told medical personnel and the police that he was assaulted, he just did not name the individuals who assaulted him. The declarant was concerned that Defendant would name

him and he would be arrested. At the time the declarant/victim made the statements, he did not know that he would be killed on December 30, 2016.

The court acknowledges that the statements were not made to police or other persons in authority such as an attorney or the medical personnel at the hospital. However, neither were the statements made by the decedent in *Cascardo*. In *Cascardo*, the decedent's (Hoffner's) statements about taking \$50,000 from the family business that was in bankruptcy proceedings and placing it into his personal account and then withdrawing \$45,000 from the personal account and "investing" it with *Cascardo*, who was engaged in loan sharking activities came from the decedent's family members and friends. Based on *Cascardo*, the court does not believe that the statements in this case had to be made to the police or medical personnel. Furthermore, Rule 804(b)(3) requires corroborating circumstances. It does not limit the corroborating circumstances to statements made to particular individuals or entities.

The court finds that there are sufficient corroborating circumstances for the evidence to be admitted. The concerns raised by the defense including the bias of the witnesses and the fact that the video does not contain the entirety of the fight but only Defendant lying on the ground in a parking area, can be asserted at trial as issues related to the weight and credibility of the evidence.

### **ORDER**

**AND NOW**, this 10<sup>th</sup> day of September 2025, the court GRANTS the Commonwealth's motion in limine.

By The Court,

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Nancy L. Butts, President Judge

cc: Martin Wade, Esquire (ADA)  
Robert Hoffa, Esquire