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Commonwealth v. Harshman

**Commonwealth of Pennsylvania v. Ronald Harshman, Defendant**

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Criminal Action  
No. 851-2000

HEADNOTES

*Hearsay; Statement Against Interest; Recantation of Prior Testimony*

1. A witness's recantation is to be viewed as notoriously suspect and unreliable. Such testimony is one of the least reliable forms of proof, particularly when it constitutes an admission of perjury. *Commonwealth v. Padillas*, 997 A.2d 356, 366 (Pa. Super. 2010)
2. Pennsylvania Rule of Evidence 804(b)(3) allows for the admission of hearsay in a criminal case if the statements are made against the declarant's interest, and there is a sufficient source of corroboration. Where the offered corroboration is untrustworthy because it is recantation testimony, such corroboration is insufficient

Appearances:

David Rauhauser, Esq., *District Attorney's Office*

Christopher Sheffield, Esq., *Attorney for the Defendant*

OPINION

Before Herman, P.J.

**Procedural History**

The instant amended Post Conviction Relief Act (PCRA) petition was filed June 30, 2006. The basis for the amended petition was the alleged recantation of two of the Commonwealth's trial witnesses, Keith Granlun and Randi Kohr. Both witnesses were inmates at the Franklin County Jail at the same time as the Petitioner and testified at trial for the Commonwealth. A PCRA hearing was held in 2009 and both witnesses were called to testify based upon their recantation. However, both witnesses invoked their 5th Amendment right against self-incrimination and refused to testify for fear of criminal prosecution.

Following the hearing, the court dismissed Petitioner's PCRA petition on September 13, 2010. The Petitioner appealed to the Superior Court. The Superior Court issued an opinion on August 31, 2011 which affirmed the matter, in part, but also remanded on very specific grounds regarding the manner in which the right not to self-incriminate could be applied. One of the grounds on which our decision was affirmed, was the refusal to admit hearsay evidence under Pa. R. E. 804(b)(3) for lack of corroborating evidence. After the matter was remanded, both witnesses were appointed counsel prior to taking the witness stand. A hearing was held on September 6, 2012, and Mr. Granlun made the decision to testify despite the risk of prosecution in order to recant his testimony at trial. Mr. Kohr decided to continue to invoke his right not to self-incriminate. Following Mr. Granlun's testimony, the Petitioner sought to introduce hearsay evidence of statements made by Mr. Kohr. The Petitioner argued that Mr. Kohr's previous statements and letters to third parties, and an affidavit would now be admissible under Pa. R. E. 804(b)(3) because Mr. Granlun's testimony supplied the requisite corroborating circumstances. The Court deferred ruling on the matter until written argument could be submitted. The parties have briefed the matter and it is now ready for decision.

**Discussion**

The sole issue before us is whether sufficient corroborating circumstances exist to admit Mr. Kohr's hearsay statements pursuant to Pa. R. E. 804(b)(3).

Rule 804(b)(3) states: “*Statement Against Interest*. A statement which was at the time of its making so far contrary to the declarant’s pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true. In a criminal case, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.” Pa. R. E. 804(b)(3).

As noted above, the Superior Court’s opinion dated August 31, 2011 previously ruled on the evidence which petitioner seeks to now admit; specifically, affidavits, Mr. Kohr’s letters to his ex-wife, and testimony of third parties that heard the witnesses recant. The Superior Court held that these pieces of evidence were not admissible. The Superior Court’s opinion stated that even if we were to assume the witnesses were unavailable, the hearsay statements against penal interest lack sufficient corroboration as required in 804(b)(3). The same evidence is before us again, however, the difference now is that Mr. Granlun has testified and only Mr. Kohr’s hearsay statements are at issue. Because some of Mr. Granlun’s statements are similar in content to Mr. Kohr’s hearsay statements, Petitioner argues that Granlun’s testimony, in conjunction, with all of Kohr’s hearsay statements, creates the necessary corroboration.

The Commonwealth argues that Mr. Granlun’s statements cannot be corroborating evidence because a witness’s recantation is to be viewed as notoriously suspect and unreliable. It is well established that recantation testimony “is one of the least reliable forms of proof, particularly when it constitutes an admission of perjury.” Commonwealth v. Padillas, 997 A.2d 356, 366 (Pa. Super. 2010) (citing Commonwealth v. McCracken, 659 A.2d 541, 545 (Pa. 1995); Commonwealth v. Dennis, 715 A.2d 404, 416 (1998) (“Recantation, however, is notoriously unreliable, particularly where the witness claims to have committed perjury.”)).

The recantation testimony provided by Mr. Granlun is precisely the type of testimony of which the appellate courts have cautioned trial courts to remain extremely suspicious. As stated above, the issue before us is whether this testimony can be corroborating of the hearsay statements of Mr. Kohr, the non-testifying witness. The first piece of evidence sought to be admitted is a written statement purporting to be an affidavit. We previously ruled that this document is inadmissible. The Superior Court affirmed our decision finding that the unsworn document which wasn’t made under penalty of law did not satisfy the requirements of an affidavit. See 1 Pa. Con. Stat. § 1991. This remains so and, therefore, the document is still untrustworthy.

The second piece of evidence sought to be admitted consists of letters from Mr. Kohr to his wife. The Petitioner argued that these letters are trustworthy due to the private and sexual content which Mr. Kohr intended to send only to his wife. The Superior Court affirmed our decision that these letters do not specifically contain recantations and are not trustworthy. The letters are evasive on specifics and could be read to merely imply recantation. Further, the letters were clearly written with the anticipation that law enforcement would be reading these letters. Therefore, the letters are untrustworthy.

The third type of hearsay evidence sought to be admitted are recantation statements made by Mr. Kohr to Lynn Varner and Megan Chilcote. The Superior Court has held that that there is no evidence of record which corroborates the testimony of these third parties or establishes that these individuals are inherently trustworthy as Petitioner suggests. This remains so.

While there are certainly numerous types of evidence that Petitioner can argue are corroborating, every one of these pieces of evidence are untrustworthy in some manner. To admit Mr. Kohr’s hearsay statements pursuant to Pa. R. E. 804(b)(3) would be to allow Mr. Granlun’s untrustworthy and suspect testimony to act as corroboration for other untrustworthy evidence (the three types of hearsay evidence discussed above). Conversely, any argument suggesting that Mr. Granlun’s testimony is trustworthy because it is consistent with the hearsay evidence, would be to allow untrustworthy hearsay to substantiate Mr. Granlun’s suspect testimony. What we are left with is untrustworthy evidence that we cannot allow to corroborate other untrustworthy evidence.

### **Conclusion**

In light of the foregoing discussion, we find that Mr. Granlun’s testimony is insufficient corroborating evidence to allow the hearsay statements of Mr. Kohr to be admitted through Pa. R. E. 804(b)(3). Mr. Kohr’s hearsay statements will be precluded.

ORDER

**NOW THIS** 4th day of March 201, upon review of the Commonwealth's objection to the admissibility of hearsay evidence, the Petitioner's response, the briefs on the matter, and the record,

**THE COURT HEREBY** finds that the hearsay evidence sought to be admitted by way of Pa. R. E. 804(b) (3) is inadmissible due to the lack of corroborating evidence in accordance with the attached Opinion.

*Pursuant to Pa.R.Crim.P. 114, the clerk of courts shall immediately docket this Order and record in the docket the date it was made. The clerk shall forthwith furnish a copy of the Order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.*