

IN THE INTEREST OF T.N.T., a juvenile
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Juvenile Court Division, No. J0307-2004

Juvenile delinquency; Admissibility of school records; Uncorroborated testimony of juvenile co-defendant

1. Under the Uniform Business Records as Evidence Act, school attendance records appear to be legally indistinguishable from school enrollment records. Therefore, the attendance records proffered in the instant case qualify as business records under the Act.
2. It is not essential, for the admission of evidence under the Uniform Business Records as Evidence Act, to produce either the person who made the entries in question or the custodian of the record at the time the entries were made.
3. School records may be admitted as business records under Pennsylvania Rule of Evidence 803.6.
4. A criminal conviction can be sustained solely on the basis of uncorroborated testimony of an accomplice.

Appearances:

Bret Alison Palmer, Esq., *Assistant District Attorney*

Leland C. Clark, Esq., *Counsel for Defendant*

OPINION

Opinion sur Pa.R.A.P. §1925(a)

Walsh, J., November 10, 2004

Background

On May 12, 2004, Officer Chappell of the Washington Township Police Department filed a petition against T.N.T. related to incidents on March 5, 2004, March 12, 2004, and April 12-13, 2004. On September 7, 2004, this Court adjudicated T.N.T. a delinquent juvenile on the following charges:

1. Burglary (3 counts);
2. Theft by Unlawful Taking (3 counts);
3. Criminal Conspiracy to Commit Burglary (3 counts); and
4. Criminal Mischief (2 counts).

By Order of Court dated September 12, 2004, this Court committed T.N.T. to George Junior Republic or other Court approved juvenile placement and suspended this commitment as long as T.N.T. remains in compliance with the Order of Court, the rules, terms and conditions of his probation supervision. The Order placed T.N.T. on 18 months Judicial Probations Supervision, with the first six months being Intensive Supervision. The Order includes additional provisions covering, among other things, community service, drug testing, and costs.

Mr. Leland Clark, counsel for T.N.T., filed a Notice of Appeal on October 4, 2004. That same day this Court ordered Mr. Clark to file a concise statement of the matters complained of on appeal. Mr. Clark did so on October 18, 2004. Mr. Clark's Issues Complained of an Appeal consist of the following two matters:

1. Whether trial court improperly admitted into evidence school attendance records of several witnesses, where the Commonwealth laid the foundation for the admission of those records using a juvenile probation officer instead of a record keeper from the school.
2. Whether the uncorroborated testimony of a juvenile co-defendant alone is sufficient to render a conviction.

The Court will discuss each of Defendant's issues in order.

Discussion

1. Whether trial court improperly admitted into evidence school attendance records of several witnesses, where the Commonwealth laid the foundation for the admission of those records using a juvenile probation officer instead of a record keeper from the school.

The Court notes that Mr. Clark preserved his objection to the admission of the school records by objecting at the time those records were offered. See September 9, 2004 transcript page 95 lines 3 through 15. Although preserved for appeal, we suggest that our decision to overrule the objection was proper. The attendance records were admissible under both the Uniform Business Records as Evidence Act^[1] and under Pennsylvania Rule of Evidence 803.6.^[2] Both appear to be applicable in this case and the records are admissible under either.^[3]

In Phillippi v. School Dist. of Springfield Township, 367 A.2d 1133 (Pa.Cmwlt. 1977), the Court held that records of enrollment in schools qualified as business records. Here, the Commonwealth proffered records of an individual student's attendance during the school year. For purposes of the Uniform Business Records as Evidence Act, school attendance records appear to be legally indistinguishable from school enrollment records. Therefore, the attendance records proffered in the instant case qualify as business records under the Act.

It is not essential, for the admission of evidence under the Uniform Business Records as Evidence Act, to produce either the person who made the entries in question or the custodian of the record at the time the entries were made. In re Indyk's Estate, 413 A.2d 371 (Pa. 1979). The person called for purpose of qualifying business record need not have any personal knowledge of facts which are reported in the particular records. Commonwealth v. Kelly, 369 A.2d 438 (Pa.Super. 1976). It is not essential under the Uniform Business Records as Evidence Act to produce either the person who made entries or the custodian of the record at time entries were made, and the law does not require that the witness qualifying business records even have a personal knowledge of facts reported in the business records, as long as the authenticating witness can provide sufficient information relating to preparation and maintenance of the records to justify presumption of trustworthiness for the business records of a company. Boyle v. Steiman, 631 A.2d 1025 (Pa.Super. 1993). Here, Ms. Shull-Miller, the witness the Commonwealth used to lay the foundation for the introduction of the attendance records, neither prepared the attendance record, nor had personal knowledge as to T.N.T.'s brother's presence or absence in school on March 12, 2004. She is not the custodian of the attendance records. However, she did testify that she is "very familiar" with the methods employed by the Waynesboro School District to track attendance. Record at 93, lines 2-3. Based on her eight years of experience as a school-based officer for the Franklin County Department of Probation, working in the Waynesboro School District, she testified in detail about the attendance tracking methods used in the school district. Record at 93, line 5 through 94, line 23. Having heard Ms. Shull-Miller's testimony and having found her a credible witness, we determined that she provided sufficient information relating to preparation and maintenance of the records to justify presumption of trustworthiness for the business records of a company. Therefore, we believe the admission of the attendance records is proper under the Uniform Business Records as Evidence Act.

In addition, school records may be admitted as business records under Pennsylvania Rule of Evidence 803.6. According to Ohlbaum on the Pennsylvania Rules of Evidence, the Court may exclude evidence under Rule 803.6 if it finds that the "source of information or other circumstances of preparation indicate lack of trustworthiness." As explained above, Ms. Shull-Miller's testimony, specifically regarding her knowledge of the attendance keeping system in place at the Waynesboro High School, is sufficient to authenticate the attendance records. There appears to be no basis for a finding that the "source of information or other circumstances of preparation indicate lack of trustworthiness." Therefore, admission of the records under Rule 803.6 is proper.

2. Whether the uncorroborated testimony of a juvenile co-defendant alone is sufficient to render a conviction.

The uncorroborated testimony of a co-defendant or accomplice is sufficient to support a conviction. In Commonwealth v. Goldblum, 447 A.2d 234 (Pa. 1982), the Pennsylvania Supreme Court held that a jury may convict even on uncorroborated testimony of an accomplice. Prior to that decision, the Pennsylvania Supreme Court held that the uncorroborated testimony of an accomplice is sufficient to support conviction; there is no rule of law in Pennsylvania that forbids a conviction on the uncorroborated testimony of an accomplice. Commonwealth v. De Masi, 83 A. 430 (Pa. 1912). A criminal conviction can be sustained solely on the basis of uncorroborated testimony of an accomplice. Commonwealth v. Gordon, 385 A.2d 1013 (Pa.Super. 1978).

Case law clearly supports conviction on the uncorroborated testimony of an accomplice, as long as the jury is charged regarding its duty to examine that testimony with care and to scrutinize its truthfulness before acting upon it. Here, the case, as a juvenile matter, was tried without a jury so there was no charge given. Defendant does not appear to be challenging the Court's care in weighing this testimony, but instead appears to argue that, by law, this testimony is insufficient. Case law contradicts Defendant's argument.

Further, the transcript reflects evidence supporting the testimony of the accomplice, J.L.T., a juvenile. Therefore, there is evidence corroborating the testimony of the co-defendant, or accomplice. Officer Bryan P. Chappell testified to the physical evidence discovered at each of the crime scenes, all of which supports J.L.T.'s testimony. Officer Chappell described the evidence found at Robert's Car Wash, which corresponds with J.L.T.'s description of how he and T.N.T. gained access to the office and storage room. Record at 41, line 7 through 42, line 5. Likewise, Officer Chappell described the physical evidence found at Ballard's Auto Sales, which corresponds with J.L.T.'s description of how he and T.N.T. gained access to the office. Record at 43, line 25 through 44, line 13. Officer Chappell's testimony corroborated J.L.T.'s description of how he and T.N.T. attempted to change the battery in a car prior to stealing cars from the Ballard Auto Sales lot. Record at 44, lines 21-5.

Conclusion

The school attendance records were admissible under both the Uniform Business Records as Evidence Act and Pennsylvania Rule of Evidence 803.6. The uncorroborated testimony of a co-defendant or accomplice provides sufficient basis for a conviction. Here, the testimony of Officer Chappell corroborated the testimony of J.L.T. For the reasons set forth above, we respectfully ask that our decision be upheld. We believe we have committed no error of law and respectfully urge the Superior Court to affirm our judgment.

ORDER OF COURT

November 10, 2004, the Clerk of Courts is directed to transmit the record of these proceedings along with this Opinion and Order to the Superior Court.

[1] **42 Pa.C.S. § 6108. Uniform Business Records as Evidence Act**

(b) General Rule.-

A record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business at or near the time of the act, condition or event, and if, in the opinion of the tribunal, the sources of information, method and time of preparation were such as to justify its admission.

(c) Definition.-

As used in this section "business" includes every kind of business, profession, occupation, calling, or operation of institutions whether carried on for profit or not.

[2] **Pennsylvania Rule of Evidence 803.6 Records of Regularly Conducted Activity**

A memorandum, report, record or data compilation, in any form, of acts, events or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the sources of information or other circumstances indicate lack of trustworthiness, The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

[3] According to Edward D. Ohlbaum, there are three differences between the Act and the Rule. Firstly, here, the evidence is a record, so both the Act and the Rule apply. Secondly, the school is not an association so the exclusion of associations under the Act has no impact here. Thirdly, Defendant failed to meet its burden under the Rule to show that the record is untrustworthy while the Commonwealth met its burden under the Act in establishing that the "sources of information, method and time of preparation" are sufficiently trustworthy. Therefore, the evidence is admissible under either the Act or the Rule. Edward D. Ohlbaum, Ohlbaum on the Pennsylvania Rules of Evidence § 803.6[3] (2004-2005 ed. 2004).