

[J-115-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

RONALD D’ALESSANDRO,	:	No. 131 MAP 2005
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court dated June 24,
	:	2005, at No. 2195 C.D. 2004, reversing
v.	:	the decision of the Administrative Law
	:	Judge of the Office of Attorney General
	:	dated September 16, 2004, at No.
PENNSYLVANIA STATE POLICE,	:	FAD00514.
	:	
Appellant	:	878 A.2d 133 (Pa. Cmwlth. 2005)

ARGUED: September 13, 2006

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: November 21, 2007

While I agree with the majority that we should evaluate this license denial under the hearsay rules applicable in judicial proceedings,¹ I would credit Appellee’s argument that the police report at issue contains double hearsay.

¹ If this case did not involve a potential infringement of Appellee’s Second Amendment rights, see Majority Opinion, slip op. at 11, we would have been presented with an interesting question in determining whether, and to what degree, hearsay rules should apply. As the majority notes, under governing statutory law, administrative agencies are not generally bound by the technical rules of evidence. See 2 Pa.C.S. §505. However, the statutory public records exception to the hearsay rule is expressly applicable to agency proceedings. See 42 Pa.C.S. §6104(b). Additionally, courts have limited the ability of agencies to rely on properly objected-to hearsay evidence in their adjudications. See, e.g., Rox Coal Co. v. WCAB (Snizaski), 570 Pa. 60, 75-76, 807 (continued . . .)

Before the administrative law judge, Appellee objected to the admission of the narrative portion of the police report, which included the characterization that the victim was Appellee's "live-in girlfriend," as well as the report's reference to the victim's address, on the basis they constituted "internal hearsay" within the report because the State Police did not establish their source. N.T. at 23, 28-30. Appellee maintains that the "live-in girlfriend" and address references are at minimum untrustworthy for purposes of the public records hearsay exception, because the State Police have not demonstrated the source of the information. The majority ultimately holds that both the address and the statement are admissible because there is nothing in the police report to "indicate' a lack of trustworthiness" under the public records exception. Majority Opinion, slip op. at 14 (emphasis in original). Although the majority does not respond directly to Appellee's double hearsay contentions, the majority states that "[s]imply because the source of information is unknown does not necessarily render the statement unreliable...." Id.

I agree with the Commonwealth Court majority, however, that "[m]erely because a police report is admitted into evidence does not make admissible every statement contained therein." D'Alessandro v. Pa. State Police, 878 A.2d 133 (Pa. Cmwlth. 2005). If the police report, itself an extrajudicial statement, contains another out-of-court statement by a declarant other than the author, it is double hearsay. See Commonwealth v. Laich, 566 Pa. 19, 25, 777 A.2d 1057, 1060 (2001). For example, in Commonwealth v. May, 587 Pa. 184, 898 A.2d 559 (2006) (Opinion Announcing the Judgment of the Court), a police officer's investigative report was admissible under an

(. . . continued)

A.2d 906, 915 (2002) (citing Walker v. UCBR, 27 Pa. Cmwlth. 522, 367 A.2d 366 (1976)).

exception to the hearsay rule, but the lead opinion noted that admission of a document “does not automatically render the statements included therein admissible.” Id. at 195, 898 A.2d at 565.² Rather, when a report contains the out-of-court statements of individuals, those statements constitute “double hearsay” and are admissible only if there is a separate hearsay exception to support the admission of each one. Id.; see also 2 K. BROUN, MCCORMICK ON EVIDENCE §324.1 (6th ed. 2006) (explaining that police reports admissible under the public records exception often contain multiple levels of hearsay, and that statements of individuals made to the officer must qualify under other hearsay exceptions or be excluded). See generally Pa.R.E. 805 (relating to “hearsay within hearsay” and requiring each level of hearsay to come within some exception to the hearsay rule in order to be admissible).

The majority appears to conclude that the State Police was not required to explain the source of the “live-in girlfriend” statement or the victim’s address. As the proponent of the evidence, however, it was the State Police’s obligation to lay a sufficient foundation for the police report, upon Appellee’s timely objection. See MCCORMICK ON EVIDENCE §51. Thus, to support its admission, the State Police would be required to identify the source of all relevant information contained therein.

Presently, the State Police argue that, when the “live-in girlfriend” statement is read in context, it most likely represents a direct quote from Appellee. See Brief for Appellant at 11. Thus, to the degree that the statement represents double hearsay, the State Police maintain that it was nevertheless admissible, at the first level under the

² Although May is a three-Justice plurality, in my concurrence I agreed with the majority approach of requiring an exception at each level of a declaration containing double hearsay to support admissibility. See May, 587 Pa. at 229-31, 898 A.2d at 586-87 (Saylor, J., concurring).

public records exception, and at the second level, as an admission of a party opponent. See Pa.R.E. 803(25).

I agree with this position. The pertinent passage from the police report proceeds as follows: “Upon arrival, Actor meet [sic] us at the door and stated that he had called the medics because he hit the victim, his live in girlfriend, knocking her to the floor, and that she was unconscious.” R.R. at 69a (emphasis added). In my view, this notation sufficiently reflects the reporting officer’s attestation that Appellee told the officer that the victim was his live-in girlfriend. Thus, although I believe that Appellee is correct that the police report contains double hearsay, I conclude that the essential information concerning the victim’s residence with him was admissible into evidence, in light of the applicability of an exception to the rule against hearsay pertaining as to each hearsay aspect.