

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT E. WRIGHT, SR. : CIVIL ACTION  
 :  
 v. :  
 :  
 MONTGOMERY COUNTY, et al. : NO. 96-4597

**MEMORANDUM AND ORDER**

HUTTON, J.

May 20, 2002

Presently before the Court is the Defendants' Motion in Limine to Preclude Plaintiff From Using or Introducing At Trial Unauthenticated Newspaper Articles (Docket No. 153). For the reasons stated below, the Defendants' motion is **GRANTED**.

**I. DISCUSSION**

Often, when offered to prove that certain statements were made, newspaper and magazine articles are held inadmissible as hearsay. See May v. Cooperman, 780 F.2d 240, 262 n. 10 (3d Cir. 1985) (Becker, J., dissenting on other grounds). However, Federal Rule of Evidence 803(24), the "residual" or "catch-all" exception to the hearsay rule, provides a mechanism by which they may sometimes be admitted. The section reads, in pertinent part, as follows:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

....

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered

as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Fed. R. Evid. 803(24); and see Parsons v. Honeywell, Inc., 929 F.2d 901, 907 (2d Cir. 1991).

The legislative history of this rule indicates that it should be applied sparingly. See Robinson v. Shapiro, 646 F.2d 734, 742 (2d Cir. 1981). But the trial court has broad discretion in assessing the probity and trustworthiness of evidence. SEC v. First City Financial Corp., Ltd., 890 F.2d 1215, 1225 (D.C.Cir. 1989); 4 Jack B. Weinstein & Margaret A. Berger, *Weinstein's Evidence P 803(24)[01]*, at 803-374 (1993). Although Rule 803(24) lists probativity and trustworthiness as separate requirements, the two requirements must be considered as linked. In essence, the task of the Court, in assessing whether a certain piece of evidence may be admitted under 803(24), is to balance the need for the evidence, in light of other available evidence, against its trustworthiness, assessed in light of the surrounding circumstances. 4 Weinstein's *Evidence P 803(24)[01]*, at 803-374 & n. 18. Courts have been willing to admit hearsay evidence under 803(24) when the declarant is available and subject to cross-examination and the hearsay statement in question was not the product of faulty perception, memory or meaning, the dangers against which the hearsay rule seeks to guard. 4 Weinstein's *Evidence P 803(24)[01]*, at 803-375 & n. 21;

and see Parsons, 929 F.2d at 907; Robinson, 646 F.2d at 742; Sherrell Perfumers, Inc. v. Revlon, Inc., 524 F.Supp. 302 (S.D.N.Y. 1980).

News accounts, unsupported by corroborating evidence and offered to prove that certain statements were made, will usually lack the "circumstantial guarantees of trustworthiness" that Rule 803(24) requires. See Larez v. City of Los Angeles, 946 F.2d 630, 642-43 (9th Cir.1991); May v. Cooperman, 780 F.2d 240, 263 (3d Cir.1985) (Becker, J., dissenting on other grounds); United States Football League v. NFL, 1986-1 Trade Cas. (CCH) P 67,101, at 62,667-69, 1986 WL 5803 (S.D.N.Y.1986). Courts admitting evidence under 803(24) require some showing that the declarant's perception, memory, narration, or sincerity are reliable. May, 780 F.2d at 263. Unsupported newspaper articles will normally fail on all of these grounds: Unless their author is available for cross-examination, newspaper stories generally will present a blank face that gives little clue as to the reliability of the reporter's perception, memory, narration, or sincerity, and in addition fails to disclose how the article was changed in the editing process. Id. Newspaper and magazine articles, however, may nevertheless be introduced into evidence if they are bolstered by supporting evidence that confers some circumstantial guarantees of trustworthiness upon them. See, e.g., Larez, 946 F.2d at 643 & n. 6 (finding "circumstantial guarantees of trustworthiness"

requirement met when three independent newspapers attributed similar quotations to defendant, who testified; nevertheless, excluding the articles as not "best evidence" under 803(24)(B)).

In the present matter, newspaper articles including statements by defendant Hoeffel are hearsay, even though the statements themselves are not hearsay because they are admissions of party opponents in their official capacities. The Plaintiff has failed to show that newspaper articles are admissible under residual exception to hearsay rule, since testimony from reporters or editors themselves regarding what the commissioner said or wrote would have been better evidence. Because the Plaintiff could easily have obtained an affidavit from the reporter(s) who wrote the articles and uncertainty exists regarding the exact meaning of quoted statements, the newspaper articles are not admissible. Fed.R.Evid. 803(24).

An appropriate Order follows.

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O R D E R

AND NOW, this 20th day of May, 2002, upon consideration of the Defendants' Motion in Limine to Preclude Plaintiff From Using or Introducing At Trial Unauthenticated Newspaper Articles (Docket No. 153), IT IS HEREBY ORDERED that the Defendants' Motion is **GRANTED**.

IT IS FURTHER ORDERED that the Plaintiff is **PRECLUDED** from introducing unauthenticated newspapers articles.

BY THE COURT:

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HERBERT J. HUTTON, J.