

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2011 MTWCC 1

WCC No. 2010-2464

DANNY LIRA

Petitioner

vs.

INSURANCE COMPANY OF STATE OF PA

Respondent/Insurer.

ORDER DENYING RESPONDENT'S MOTION *IN LIMINE*

Summary: Petitioner's co-worker (Schmidt) shot him in the head during an at-work altercation. Respondent moves *in limine*, seeking an order allowing it to introduce into evidence statements made by Schmidt alleging he was acting in self-defense. Respondent argues that the statements qualify as statements against interest and are therefore excepted from the hearsay rule.

Held: Schmidt's statements that he acted in self-defense when he shot Petitioner would not tend to subject Schmidt to criminal liability so much as they would tend to exculpate him from criminal liability. A person in Schmidt's position would be expected to claim some sort of justification for his action, irrespective of whether he believed it to be true. The statements therefore do not qualify as statements against interest under Mont. R. Evid. 804(b)(3) and are not admissible.

Topics:

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Evidence – by Section: Rule 804. A witness who has invoked his Fifth Amendment right against self-incrimination and refuses to testify is unavailable within the meaning of M.R.Evid. 804(a).

Evidence: Invoking Fifth Amendment. A witness who has invoked his Fifth Amendment right against self-incrimination and refuses to testify is unavailable within the meaning of M.R.Evid. 804(a).

Constitutions, Statutes, Regulations, and Rules: Montana Rules of Evidence – by Section: Rule 804. The previous statements of a witness who is unavailable to testify within the meaning of M.R.Evid. 804(a) are not admissible as statements against interest under M.R.Evid. 804(b)(3) where the statements made were that the witness shot the injured worker in self-defense. A statement in which the witness offered justification for his action is exculpatory and does not constitute a statement against interest.

Evidence: Admissibility. The previous statements of a witness who is unavailable to testify within the meaning of M.R.Evid. 804(a) are not admissible as statements against interest under M.R.Evid. 804(b)(3) where the statements made were that the witness shot the injured worker in self-defense. A statement in which the witness offered justification for his action is exculpatory and does not constitute a statement against interest.

¶ 1 Respondent Insurance Company of State of PA (Insurance Company of PA) filed a motion *in limine*, seeking an order allowing it to introduce into evidence two recorded statements and several oral statements made to third parties by Craig Schmidt. Schmidt is Petitioner Danny Lira's former co-worker at Wal-Mart. Schmidt shot Lira in the head during an altercation at work. Lira's claim before this Court arises from this shooting incident. The statements which Insurance Company of PA seeks to introduce are statements in which Schmidt explains why he shot Lira. Specifically, Insurance Company of PA wants to introduce statements by Schmidt in which he alleges that Lira was the initial aggressor and instigated the altercation, causing Schmidt to fear for his life and shoot Lira in self-defense.¹

¶ 2 Schmidt has invoked his Fifth Amendment right against self-incrimination and refuses to testify regarding the shooting incident.² Insurance Company of PA argues that this makes Schmidt unavailable within the meaning of Mont. R. Evid. 804(a). Insurance Company of PA argues that Schmidt's statements are admissible pursuant to Mont. R. Evid. 804(b)(3) as statements against interest.

¶ 3 I agree with Insurance Company of PA that Schmidt's refusal to testify renders him unavailable. The Montana Supreme Court noted in *In Re Marriage of Sarsfield* that a claim of privilege against self-incrimination is generally regarded as a sufficient ground

¹ Respondent's Motion in Limine and Brief in Support at 1 and 4.

² Respondent's Motion in Limine and Brief in Support, Ex. C.

of unavailability.³ However, Schmidt's statements, the gist of which are that he feared for his life and shot Lira in self-defense, do not qualify as statements against interest.

¶ 4 Insurance Company of PA argues, "Schmidt has made several statements against his self-interest in explaining why he shot Petitioner in self-defense. . . . Telling someone that you shot another person in the head and why, is clearly a statement against self-interest."⁴ I agree with Insurance Company of PA that telling someone that you shot another person in the head is a statement against self-interest; it is the "and why" that bears closer scrutiny.

¶ 5 Mont. R. Evid. 804(b)(3) provides in pertinent part:

Statement against interest. A statement which was at the time of its making . . . so far tended to subject the declarant to civil or criminal liability, . . . or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in the declarant's position would not have made the statement unless the declarant believed it to be true.

¶ 6 There is no dispute in this case that Schmidt shot Lira. Absent any justification for the shooting, Schmidt likely would be subject to criminal liability. Schmidt's statements that he shot Lira in self-defense, therefore, would not tend to subject Schmidt to criminal liability so much as they would tend to exculpate Schmidt from criminal liability. A person in Schmidt's position would be expected to claim some sort of justification for his action, irrespective of whether he believed his statements to be true.

¶ 7 "I shot a man in Reno just to watch him die," would be a good example of a statement against interest. "I shot a man in Reno because I feared for my life and was acting in self-defense," would not. Schmidt's statements that he acted in self-defense when he shot Lira do not qualify as statements against interest. Accordingly, they are not admissible under Mont. R. Evid. 804(b)(3).

ORDER

¶ 8 Respondent's motion *in limine* is **DENIED**.⁵

³ 206 Mont. 397, 407-08, 671 P.2d 595, 601 (1983).

⁴ Respondent's Motion in Limine and Brief in Support at 4.

⁵ Insurance Company of PA filed its motion on December 30, 2010. Since the case was set for trial the week of January 17, 2011, I convened a conference call *sua sponte* on January 3, 2011, to give an oral ruling on the motion. Because the conference call was convened before Lira had an opportunity to respond to the motion in

DATED in Helena, Montana, this 5th day of January, 2011.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: R. Russell Plath
G. Andrew Adamek
Submitted: January 3, 2011

writing, Lira's counsel wished the record to reflect that he opposed admission of Schmidt's statements on both hearsay and relevancy grounds. In light of my ruling, it was unnecessary to address Lira's relevancy argument.