

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of October, 2015.

Mark Thomas Cvetnich, Appellant,

against Record No. 150014
Court of Appeals No. 0174-14-4

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of the opinion that there is no reversible error in the judgment of the Court of Appeals.

Cvetnich was convicted by a jury in the Circuit Court of Stafford County of assault and battery of Sharon Beck, a friend of Cvetnich's wife. At trial, Cvetnich claimed that Beck had a financial motivation to lie about the attack and that she made inconsistent statements under oath. Cvetnich asserts that he sought to support these claims by introducing into evidence a bankruptcy petition previously filed by Beck and an audio recording of Beck's interview with the investigating police officer. The trial court refused Cvetnich's motions to admit this evidence. The Court of Appeals refused Cvetnich's challenge to these rulings in his appeal to that court. He raises the same issues here.

Cvetnich first argues that the trial court curtailed his right to show that Beck was biased because she had a financial motivation to lie when it refused to allow him to introduce Beck's bankruptcy petition into evidence. The record, however, shows that Cvetnich proffered Beck's bankruptcy petition, not to show bias based on financial motivation, but to show that Beck was lying under oath when she testified at the preliminary hearing that her nose had not been broken before this assault and battery because the petition, filed prior to this incident, contained an item showing that Beck had seen an otolaryngologist. The record further shows that Cvetnich was allowed to question Beck extensively regarding her financial condition and her financial

relationship with Cvetnich's wife. Therefore, because Cvetnich never sought to introduce Beck's bankruptcy petition for the purpose of showing bias, and because Cvetnich does not identify any other document or question regarding the issue of bias that the trial court refused to admit or allow, we reject his claim that the trial court impermissibly limited his right to cross-examine Beck to show bias.

Cvetnich also contends that the trial court erred in refusing to admit the investigating officer's audio recording of his interview with Beck for the purpose of impeaching Beck. Cvetnich asserts that the recording includes Beck's statement that her nose had been injured before the assault and battery, which he argues is inconsistent with Beck's testimony at the preliminary hearing. When Beck testified at trial that she did not remember what she had told the investigating officer, Cvetnich sought to introduce the audio recording to refresh her memory, citing Rule of Evidence 2:613. The trial court refused to allow admission of the audio recording, ruling that whether Beck had previously broken her nose was collateral to the elements of the offense for which Cvetnich was on trial.

Rule of Evidence 2:613(a)(ii) allows admission of extrinsic evidence of a witness' prior inconsistent statement if the witness does not remember the prior inconsistent statement. However, the Rule specifically provides that "[e]xtrinsic evidence of collateral statements is not admissible." A fact is "collateral to the main issue if the fact cannot be used in evidence for any purpose other than for contradiction." Seilheimer v. Melville, 224 Va. 323, 327, 295 S.E.2d 896, 898 (1982). In this case, whether Beck had suffered a broken nose prior to the assault and battery at issue was irrelevant to the facts at issue in Cvetnich's trial and its sole purpose was for impeachment. Therefore, the trial court correctly ruled that the recording was an inadmissible collateral statement.

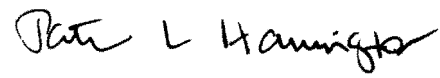
Accordingly, for the reasons stated, we affirm the judgment of the Court of Appeals. The appellant shall pay to the Commonwealth of Virginia two hundred and fifty dollars damages.

Justice Kelsey took no part in the consideration of this case.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of Stafford County.

A Copy,

Teste:

A handwritten signature in black ink, appearing to read "Peter L. Haminger". The signature is written in a cursive style with a large initial "P" and a long horizontal stroke at the end.

Clerk