

FILED
12-22-2022
Clerk of Courts
Oconto County WI
2021CF000173

BY THE COURT:

DATE SIGNED: December 22, 2022

Electronically signed by Michael T Judge
Circuit Court Judge

STATE OF WISCONSIN CIRCUIT COURT OCONTO COUNTY

STATE OF WISCONSIN,
Plaintiff,

MEMORANDUM DECISION

vs.

Case No. 21 CF 173

ALISHA M. KOCKEN,
Defendant.

FACTS

The defendant, Alisha Kocken, was arrested on August 6, 2021 and brought to the Oconto County Jail. On August 9, 2021, the defendant was transported to Bellin Hospital for medical clearance pursuant to a civil commitment.

The medical record at the hospital reflects that the defendant on August 9, 2021 was attended by Doctor Elizabeth Russell and two nurses. A note in the medical record created by Doctor Russell reflects that a nurse told Doctor Russell that the defendant stated that the last time she used methamphetamine was on August 6. Some time later, after further investigation by the Oconto County Sheriff's Department, both nurses stated that they have no memory of their treatment of the defendant. Doctor Russell states that she would not have put the statement of the defendant to the nurse in the medical record unless the nurse told her this.

ARGUMENT

The State has filed a motion asking the Court for admission of the statement of the defendant as to her use of methamphetamine on August 6 as contained within the Bellin Hospital medical record. The defense has filed a motion to exclude that evidence alleging that it is not relevant, is hearsay, has low probative value, and its admission would improperly prejudice the defendant.

Wisconsin Statute 908.01(4)(b)1 states that: a statement is not hearsay when the statement is the party's own statement and either the party is individual or a representative capacity. Likewise, a statement made for purpose of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain or sensations or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment is likewise an exception to the hearsay provisions of Wisconsin Statute 908.03(4).

The State further advises the Court that Wisconsin Statute 908.03(6m)(b) states as follows:

Authentication witness unnecessary. A custodian or other qualified witness required by sub. (6) is unnecessary if the party who intends to offer patient health care records into evidence at a trial or hearing does one of the following at least 40 days before the trial or hearing. 1. Serves upon all appearing parties an accurate, legible and complete duplicate of the patient health care records for a stated period certified by the record custodian. 2. Notifies all appearing parties that an accurate, legible and complete duplicate of the patient health care records for a stated period certified by the record custodian is available for inspection any copying during reasonable business hours at a specified location within the county in which the trial or hearing will be held.

A review of the records and file in this matter shows that the State has complied with the authentication requirements. A statement by the defendant that she took methamphetamine on August 6 is an admission by a party opponent under 908.01(4)(b)1. The Court further finds that the statement of the defendant that she took methamphetamine on August 6 are admissible medical records under Wisconsin Statutes 908.03(4) and 908.03(6).

The defense also alleges that there was no confrontation. The defense alleges that even though the medical records under Wisconsin Statute 908.03(4) and 908.03(6) are admissible, the Court should find that they are not relevant. A decision to admit or exclude evidence as to whether or not it is relevant is at the discretion of the Court. The defense is asking the Court to exercise its discretion and exclude the evidence of the medical report because its probative value is outweighed by its prejudicial and misleading effect. The Court recognizes that the nurses have no recollection

of who gave the statement to Doctor Russell if a statement was even made at all indicating that the defendant had last taken methamphetamine on August 6th. That statement if given by the defendant to a nurse who then relayed it to Doctor Russell is nontestimonial because it clearly was not made as a substitute for in court testimony or preparation for litigation. The issue of the alleged statement by the defendant to the medical personnel at Bellin Hospital on August 9, 2021 is not an issue of admissibility but rather this Court believes it is an impeachment issue. The Court is well aware of the competence and capability of defense counsel who certainly can set forth before the jury a cross-examination of witnesses and argument as to the jury's non-reliance of the alleged statement made to Doctor Russell on the defendant's medical report.

The Court therefore finds the proffered evidence of the State of Wisconsin as to the medical report of this defendant from Bellin Hospital on August 9, 2021 to be relevant. The Court further finds that the probative value of this evidence does outweigh its prejudicial effect because this Court believes that the evidence sought to be admitted by the State will not mislead or confuse the jury.

The Court will allow the defendant to request limiting instructions to be given to the jury regarding this evidence.