

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CLAYTON MIBRODA,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1529 WDA 2013

Appeal from the Judgment of Sentence Entered April 16, 2013  
In the Court of Common Pleas of Westmoreland County  
Criminal Division at No(s): CP-65-CR-0000783-2012

BEFORE: GANTMAN, P.J., BENDER, P.J.E., and OTT, J.

MEMORANDUM BY BENDER, P.J.E.:

**FILED JULY 29, 2014**

Appellant, Clayton Mibroda, appeals from the judgment of sentence of fifteen to thirty years' incarceration, imposed after a jury found him guilty of third degree murder in the death of his twenty-day-old daughter. Appellant challenges the trial court's decision to exclude all evidence of the past drug use of the infant's mother (Mother) from his jury trial. For the reasons that follow, we affirm.

The trial court summarized the facts of this case as follows:

The testimony at trial established the following. According to EMS personnel[,] [Appellant] was present with the lifeless infant and he was calm. [Appellant] stated to them that he was at home with the baby and [M]other was not home. When he fed the child[,] she was unresponsive. The ER nurse testified that [Appellant] said he was at home with the baby and [M]other was not home. When he fed the child[,] she was unresponsive. She also testified that at the hospital [M]other was hysterical while [Appellant] was calm[.] Mother's testimony was that she left the baby sleeping with [Appellant] while she went to see a doctor

and was gone for a couple of hours. ([T]his fact was corroborated by both her grandmother and the physician). [Appellant] said he had fed the baby in the back room and when she [Mother] went in he told her to get out. The elected Coroner testified that [Appellant] told him that the baby had trouble breathing while he was feeding her. [Appellant] did not want an autopsy to be performed[.] The cause of death was blunt force trauma to the head and chest with the manner of death being homicide.

Trial Court Opinion (T.C.O.), 8/21/13, at 2 (internal citations omitted).<sup>1</sup>

After the jury convicted Appellant of third degree murder, he received a sentence of fifteen to thirty years' incarceration. On April 26, 2013, Appellant filed post-sentence motions, which the court denied. Appellant then filed a timely notice of appeal, and the court ordered him to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied and filed his Rule 1925(b) statement on October 21, 2013. In his brief, he raises the following issue for our review:

Whether the lower court erred in granting [the Commonwealth's] motion to exclude evidence in regard to drug evidence.

Appellant's brief at 4 (unnecessary capitalization and emphasis omitted).

At trial, Appellant argued that Mother actually murdered the child. Appellant's Brief at 10. To this end, he sought to have evidence of her past drug use admitted. ***Id.*** Specifically, Appellant wanted to introduce evidence indicating that the child was born with opiates in her system due to Mother's use of drugs during pregnancy. ***Id.*** at 11-12. While Appellant conceded

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<sup>1</sup> The court authored this opinion in the context of denying Appellant's post-sentence motions.

that the child's injuries at death were unrelated to the opiates found in the child's system at birth, he asserted that Mother's use of opiates while she was pregnant tended to show her lack of concern for the child. **Id.** at 12.

During our initial review of this case, this Court requested that the trial court prepare an opinion pursuant to Rule 1925(a) explaining its reasoning for precluding evidence of past drug use at trial because it had not addressed the matter in its earlier opinion. The trial court promptly complied, and submitted its basis for excluding such evidence at trial. We are now able to properly analyze Appellant's issue.

Our standard of review is well established:

The admission of evidence is a matter vested within the sound discretion of the trial court, and such a decision shall be reversed only upon a showing that the trial court abused its discretion. In determining whether evidence should be admitted, the trial court must weigh the relevant and probative value of the evidence against the prejudicial impact of the evidence. Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. Although a court may find that evidence is relevant, the court may nevertheless conclude that such evidence is inadmissible on account of its prejudicial impact.

**Commonwealth v. Antidormi**, 84 A.3d 736, 749 (Pa. Super. 2014) (internal citations omitted). This Court has also stated, "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record." **Id.** (internal citation omitted).

In its Rule 1925(a) opinion, the trial court recounted Appellant's efforts to introduce evidence of Mother's past drug use at trial, explaining:

The Commonwealth made a pretrial motion *in limine* to prohibit questioning any witness about drug or alcohol use or abuse unless it was related specifically to the date in question, December 27, 2011. The [c]ourt inquired of defense counsel[,] who sought to introduce evidence that the infant was born with opiates in her system[,] whether the defense intended to prove that fact to explain[] why some of her injuries occurred. Defense counsel said "No." The defense intended to show that [M]other's prenatal drug use would show how [M]other cared for her child. It would show, in the words of defense counsel[,] "what little care she had or thought she had while she was carrying it (the child) that she would still put drugs in her system, and also then how she continued on through the first only 20 days of the child's life and that she is not above the idea of being the one who caused these injuries."

After further discussion, it became apparent that if [M]other's drug use was admissible, she would testify she received the drugs from [Appellant] who had a previous drug conviction. Defense counsel admitted that neither side had any evidence either parent was using drugs at the time of the infant's death. This [c]ourt concluded that evidence of either parent's prior drug use would be irrelevant in this case since it did not tend to prove or disprove how this child sustained severe life-ending physical injuries or who caused those injuries. If evidence of [M]other's past drug use is viewed to be relevant, then evidence of father's drug use would be equally relevant. The simple fact of the matter is that either or both parent's prior drug use does not tend to prove or disprove who inflicted brutal injuries on this precious child. That evidence did not pass the test of relevance, at least at the pre-trial phase.

It should be noted that this Court advised trial counsel it would revisit its ruling on the motion *in limine* if counsel raised the issue at trial if one of them believed a door had been opened.

Defense counsel believed the door was opened following the testimony of [] a nurse manager at the Indiana Regional Obstetrics unit. He sought approval to approach the bench, which was granted. [Defense counsel] argued that this

witness'[s] testimony opened the door to evidence that the baby was born with opiates in her system. This side bar conference was on the record [] of the trial transcript.

This [c]ourt asked defense counsel: "What does [it] prove or disprove [in] this case?"

Defense counsel answered: "It [] prove[s] how [] [Mother] treats the baby even before birth."

The [c]ourt countered: "And as related to cause of death, that would be connected how?"

Defense counsel: "I think it['s] [] a logical [inference] that can be drawn."

The [c]ourt: "[T]hat a child stops breathing when a child [is] in the total care of [Appellant] because the child had opiates in its system when it was born?"

Later, defense counsel admitted: "The only connection I have, [Y]our Honor, with all due candor to the [c]ourt, is the argument how she treated the baby and that he wasn't the only one alone with the baby[.]"

Further discussion occurred on the record[,] which revealed that the baby was born with opiates in her system[,] but was not diagnosed as being opiate dependent.

Pa.R.A.P. 1925(a) Opinion, 6/24/14, at 2-4 (internal citations omitted).

Here, the trial court ultimately concluded that evidence of Mother's past drug use was not relevant or sufficiently probative. First, in terms of relevance, we note, "[e]vidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding the existence of a material fact." ***Antidormi***, 84 A.3d at 750 (internal citations omitted). In this case, the trial court determined that Mother's past drug use did not help to establish who fatally injured the child by blunt force

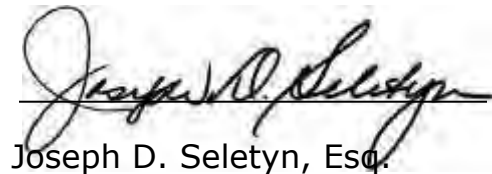
trauma to the head. The court also explained that there was no evidence presented that either parent was under the influence of alcohol or drugs at the time of the child's injuries. **See** Pa.R.A.P. 1925(a) Opinion at 5-6. Further, the court noted that the toxicology results of the child following her death were negative, and that Appellant had also used drugs. **See id.** at 4-5 ("[I]f such evidence were admitted relevant to [] [M]other, it would also be admissible under the same theory relative to [Appellant]."). Therefore, based on the trial court's well-reasoned explanation, we conclude that the court did not abuse its discretion in determining that the evidence at issue was not relevant.

Second, even if the evidence were relevant, it would nevertheless have been inadmissible because its prejudicial impact outweighed its probative value. "The probative value of the evidence might be outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, pointlessness of presentation, or unnecessary presentation of cumulative evidence." **Antidormi**, 84 A.3d at 750 (internal citations omitted). In its analysis, the trial court determined that evidence of prior drug use had no probative value, stating, "It is not surprising that two individuals using drugs would find each other in life. That would not help the jury one iota in this case." Pa.R.A.P. 1925(a) Opinion at 4. Further, notwithstanding the negligible probative value of the evidence, the court recognized that it would likely have a severe prejudicial impact and distract the jury from ascertaining responsibility for the physical injuries to the child.

The trial court explained, "Evidence of prior drug usage by one or both parents would have served to taint the user in the eyes of the jury. It would not have helped the jury decide who was responsible for causing the brutal, traumatic injuries that took [the child's] life after twenty short days." ***Id.*** at 6. We agree. Therefore, for the foregoing reasons, we affirm the trial court's decision to preclude evidence of Mother's prior drug use.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", is written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/29/2014