



Commander's Log

LEGAL UPDATE FOR MARYLAND CORRECTIONAL
ADMINISTRATORS AND OFFICERS

July 2017

Administrative Hearings, Criminal Trials, and Double Jeopardy

Question: Is evidence related to the outcome of an administrative proceeding against an inmate admissible in a criminal trial based on the same events?

Answer: No. Evidence related to the outcome of an administrative proceeding against an inmate generally is not admissible in a criminal trial arising from the same event.

Case: *Paul Virts v. State of Maryland*
Maryland Court of Special Appeals
(Unreported)
Decided June 26, 2017

The Assault on the Officer

On the afternoon of July 14, 2015, Correctional Officer Ronnie Carman was on duty in the segregation unit of the Eastern Correctional Institute ("ECI"). When Carman cuffed Paul Virts, an inmate on "Bravo Tier," and opened his cell door to

lead him to the recreation room, Carman discovered that Virts had something in his hand. Carman asked what it was, and Virts responded, "It's my fishing line, bitch, and you're not going to get it." Informed by Carman that he could not take the fishing line into the recreation room, Virts asked to be taken back to his cell, where Carman uncuffed him. As soon as he returned to his cell, Virts went on a "rant," jumping up and down, beating on the door, calling Carman names, and saying he was going to "shit him down, piss him down," and call his brother, who was a gang member, to have Carman killed.

Approximately 20 minutes later, when Carman opened Virts's door slot and set his food tray on the shelf, Virts grabbed the tray and said, "You're not getting this tray back, bitch." Virts continued to curse Carman and exclaim he was going to "piss him down and shit him down," so Carman closed the food slot. As Carman turned away from Virts's door, a liquid that had a strong smell of urine hit him on the leg and splashed across the floor. Virts held up a half-full shampoo bottle and said, "I got some more for you, bitch."



The lieutenant on duty informed Virts he would receive an infraction and be placed on “Staff Alert Level One” for assaulting an officer. A crew was called to clean up the liquid and verified it was urine. Carman changed into a fresh uniform following the incident, but did not seek medical treatment.

The Internal Investigation

Detective Horace Pepper of the Department of Public Safety and Correctional Services, Internal Investigation Division, was assigned to investigate the matter. Pepper took Virts’s statement on July 23, 2015, after advising him of his *Miranda* rights. Pepper questioned Virts about the charges related to his assault upon Carman and the possession of contraband. During Pepper’s investigation, Virts accused Carman of assaulting him by grabbing his handcuffs, which Carman later denied doing. As a result of Virts’s complaint, Pepper obtained a statement from Virts, interviewed another inmate, and reviewed the video footage from a camera on Bravo Tier. After further investigation, Pepper determined that Virts’s accusation against Carman was unfounded. Pepper made no finding regarding Carman’s claims against Virts.

The Administrative Hearing

Carman filed administrative charges against Virts for: (1) assault or battery on staff; (2) use of threatening, coercive, or intimidating language; and (3) profanity, disrespect, or insolence. On July 27, 2015, Correctional Hearing Officer Peter Juknelis conducted a hearing on those charges. At the conclusion of the hearing, Juknelis found that there was insufficient evidence to support the charged offenses against Virts. Specifically, Juknelis noted the absence of: (1) the filing of a Serious Incident Report relating to an assault on staff, which was standard protocol; (2) photographs showing Carman covered with the liquid alleged to be urine; and (3) attachments from other ECI staff members regarding the assault on staff. Moreover, Juknelis

found Virts’s testimony, and that of another inmate who corroborated his story, credible. Therefore, presented with nothing more than Carman’s written report, Juknelis concluded that the evidence was insufficient to support the administrative charges against Virts.

The Criminal Charges and the Motion to Admit Evidence from the Administrative Hearing

The State filed criminal charges against Virts for second-degree assault of a Division of Corrections officer, making a false statement to a law enforcement officer, and possession of contraband in a place of confinement.

Virts submitted a pretrial motion to have the court admit Juknelis’s findings from the administrative hearing during the upcoming trial. At a hearing on the motion, Juknelis testified that he had found that the administrative charges against Virts were not supported by sufficient evidence. Defense counsel argued, therefore, that Virts was entitled to dismissal on the pending criminal charges because a trial would amount to double jeopardy after his acquittal of all charges at the administrative hearing. The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides: “[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb” In other words, The Double Jeopardy Clause prohibits anyone from being prosecuted twice for substantially the same crime.

The State countered that the administrative hearing had no bearing on the criminal trial because the State was not a party to the administrative hearing and Virts was not subject to any criminal consequences during the administrative proceeding.

The trial court denied Virts’s motion, pointing out that the pending criminal charges was not addressed at the administrative hearing. With regard to the charge of assault, the administrative hearing – which the State did not participate in – was not the



type of proceeding that would give rise to a finding of double jeopardy, *res judicata*, or collateral estoppel. The trial court, therefore, denied Virts's motion.

The Criminal Trial and Appeal

At trial, the court again ruled that the transcript of the administrative hearing, as well as any testimony regarding the hearing itself, were not admissible. Virts was convicted of assault and making a false statement. He appealed.

On appeal, the Court of Special Appeals affirmed the rulings of the trial court pertaining to the administrative hearing for the following reasons: (1) two of the three criminal charges filed against Virts in the trial court were not previously adjudicated at the administrative hearing; (2) the administrative hearing was conducted with a different burden of proof, different rules of evidence, and different witnesses than the trial; and (3) Juknelis's proposed testimony, as well as his accompanying exhibit from the administrative hearing, were hearsay (an out-of-court statement offered in court for the truth of the matter asserted). Moreover, it was for the jury to decide Virts's credibility, not Juknelis.

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