Circuit Court for Prince George's County
Case No. CT150514X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2374

September Term, 2015

ERIKA LYNNE LAWS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: September 19, 2017

In the Circuit Court for Prince George's County, Erika Lynne Laws, the appellant, was charged with filing a false document, that is, the will of William Van Croft, III ("the Will"), and perjury by affidavit. The allegedly false statement that was the basis for the perjury charge was Laws's representation, in a "Small Estate Petition for Administration" ("the Petition"), that she was nominated in the Will to be personal representative of Van Croft's estate ("the Estate").

A jury acquitted Laws of filing a false document but convicted her of perjury by affidavit. The court sentenced Laws to ten years in prison, suspending all but 93 days, which was time served. It ordered her to pay $15,000 in restitution to the Estate and to have no contact with William Van Croft, IV, as conditions of her probation.

On appeal, Laws presents four questions for review, which we have rephrased:

I. Did the trial court err by admitting into evidence two orphans' court orders?

II. Did the trial court err by admitting into evidence expert opinion testimony by a lay witness?

III. Did the trial court err by ordering Laws to pay restitution to the personal representative of the Estate, as a condition of probation?

IV. Did the trial court err by ordering Laws to have no contact with William Van Croft, IV, as a condition of probation?

Because we conclude that the trial court erred by admitting the orphans' court's orders into evidence, we shall reverse the judgment and remand for further proceedings.

FACTS AND PROCEEDINGS

Laws's trial took place on October 27 and 28, 2015. The State called two witnesses: Lisa Batson, the Assistant Chief Deputy of the Register of Wills for Prince

George's County ("Register of Wills"), and Patrick Merkle, an attorney. It moved several documents into evidence. Laws testified in her own defense but did not call any witnesses or move any documents for admission. The evidence showed the following.

On January 31, 2008, Van Croft was killed when he was hit by a motor vehicle as he was walking on the median strip of Route 301 in Prince George's County. At the time, Laws was Van Croft's live-in girlfriend.

On February 4, 2008, in the office of the Register of Wills, Laws filed the Will. It was a six-page document entitled "Last Will and Testment [sic] William Arthur Van Croft, III." The Will was signed without a date but with a notary attestation giving the date as June 28, 2007. It was witnessed by two people. Paragraph Thirteenth of the Will nominated Laws as personal representative.

With the Will, Laws filed the Petition. In Paragraph 4 of the Petition, Laws stated that she was entitled to priority of appointment as personal representative because "I AM NOMINATED IN [VAN CROFT'S] LAST WILL & TESTAMENT." Laws signed the Petition under the statement: "I solemnly affirm under the penalties of perjury that the contents of the foregoing petition are true to the best of my knowledge, information and belief."[1]

Lisa Batson accepted the Will and attached Petition for filing and opened the Estate. She did not notice anything wrong with the Will. Laws was appointed personal representative.

[1] The Will and Petition were admitted as Exhibit 1.

Van Croft and his ex-wife, Jacquelyn Van Croft ("Jacquelyn"), had two children: Revé Van Croft ("Revé") and William Van Croft, IV ("Billy"). At the time of their father's death, Revé was an adult and Billy was 17 years old. He suffered from disabilities. Sometime after February and before September 2008, Jacquelyn retained attorney Patrick Merkle to look into bringing legal action on behalf of Revé and Billy in connection with the motor vehicle accident in which Van Croft was killed. Knowing that the accident could give rise not only to a wrongful death claim but also to a survival claim, Merkle investigated the status of Van Croft's estate. He discovered that the Estate had been opened only a matter of days after Van Croft's death.[2]

Merkle reviewed the Will and compared it to a copy of the Will that had been mailed to Revé after Laws was appointed personal representative. He noticed what he considered to be "red flags" that suggested tampering. The Will was not signed or initialed by Van Croft on every page. The Will as filed in probate had no page numbers, but the supposedly identical copy *did* have page numbers. The attestation clause referred to Van Croft as the "Testatrix," not the "Testator," and used "her" where the proper word would have been "his."[3]

[2] To Merkle's knowledge, the assets in the Estate included the proceeds from a 401(k) account; money due Van Croft from the Washington, D.C. school system for the education of Billy, a special needs student; and a valuable piano. During her trial testimony, Laws stated that she was the named beneficiary of Van Croft's 401(k) account and that it passed outside the Estate; that Van Croft had purchased the piano for her, as a gift, and that it was not part of the Estate; and that she did not receive any money payable for Billy's education.

[3] The attestation clause stated:

(Continued…)

On September 26, 2008, in the Orphans' Court for Prince George's County, Merkle, acting on behalf of Revé and Billy, filed a petition to caveat the Will. By order of November 13, 2008, the orphans' court removed Laws as personal representative of the Estate and appointed Revé as successor personal representative. Then, by order dated December 17, 2008, the orphans' court declared that the Will was of no force and effect and ordered that the Estate proceed as an intestate estate.[4] Laws appealed the decision of the orphans' court.[5]

As noted, Laws testified on her own behalf. She stated that Samuel Hamilton, an attorney she and Van Croft knew, had given them a template to use for Van Croft to draft his own will. On June 28, 2007, they used the template to create the Will. Van Croft told Laws what to include in the Will, and Laws typed it as he was dictating to her. Billy (then 16 years old) was present and offered his opinions about the Will when it was finished. Van Croft and Laws took the Will to the office of Laws's long-time attorney,

(…cont'd)

> On this ___ day of ___ 2007, WILLIAM ARTHUR VAN CROFT, III, the above named Testatrix, signed the foregoing instrument consisting of six (6) typewritten pages, each identified by the signature of the Testatrix, in our presence and at the same time declared it to be his LAST WILL AND TESTMENT, and we do now at her request and in her presence and in the presence of each other, hereto subscribe our name as Witnesses.

[4] As we shall discuss, these orders were admitted into evidence over objection.

[5] Presumably, that appeal was unsuccessful. Its outcome is not evident from the record, however.

Pat Christmas, for witness attestation by two people on Christmas's staff. Laws and Van Croft then took the Will to be notarized. Afterward, they put it in a safe deposit box.

According to Laws, after Van Croft's death, at Christmas's direction, she retrieved the Will from the safe deposit box and took it to the Register of Wills. She was not accompanied by an attorney or anyone else. Because she was upset and crying, Batson helped her fill out the required forms, including the Petition, and directed her to sign them, which she did. The Will bequeathed nothing to Revé other than her father's "good wishes and prayers for a safe and happy life." The Will also left nothing to Van Croft's mother and brother, "for reasons well known" to them. The Will left the bulk of the Estate to Laws and stated that Laws was to be guardian of Billy.

Laws denied any wrongdoing in the creation of the Will or the filing of the Will and Petition with the Register of Wills. She testified that Merkle brought a wrongful death suit on behalf of Revé and Billy and that she did not receive any money from the settlement of that suit.[6] Laws claimed she was Van Croft's common law wife in Washington, D.C., even though the Will referred to her as his "friend." She accused Merkle of lying about receiving a copy of the Will and testified that he and Revé and Billy had "created alternate versions of that Will." Laws testified that she did not receive any assets from the Estate.

[6] No survival claim was brought. According to Merkle, the wrongful death suit was settled for approximately $450,000, in 2009. At trial in the case at bar, the prosecution theorized that Laws filed a fraudulent Will naming herself personal representative of the Estate and Billy's guardian so she could control the settlement funds she thought would come into existence once a lawsuit was filed.

As noted, the jurors returned a verdict of not guilty on the false document charge, which pertained to the Will, and a verdict of guilty on the perjury by affidavit charge, which pertained to the Petition.

DISCUSSION

I.

During Merkle's direct examination, the State moved the admission of the two orders of the Orphans' Court for Prince George's County entered in the Will caveat case. Chronologically, the orders are as follows:

ORDER

> UPON CONSIDERATION of the hearing held November 13, 2008 and a request having been filed, it is this 13th day of November 2008, by the Orphans' Court for Prince George's County, Maryland
>
> ORDERED, that Erikda [sic] Laws be removed as personal representative; and it is further
>
> ORDERED, that Revé Van Croft be, and is, hereby appointed successor personal representative, without bond.
>
> (signed)
> JUDGE

And:

ORDER

> UPON CONSIDERATION of the hearing held in the above-referenced estate, it is this 17th day of December, 2008 by the Orphans' Court for Prince George's County, Maryland
>
> ORDERED, that the Petition to Caveat is hereby granted; and it is further

ORDERED, that the Last Will and Testament dated June 28, 2007 is found to have no force and effect; and it is further

ORDERED, that the Estate of William Arthur Van Croft shall proceed as an intestate estate.

(signed)
JUDGE

Defense counsel objected, arguing that the orders were inadmissible hearsay and were unduly prejudicial. The prosecutor responded that the orders were admissible under Rule 5-803(b)(8)(A)(i), pertaining to records of public officials or agencies, and under Rule 5-803(b)(24), which allows the admission of documents containing hearsay when they have guarantees of trustworthiness. The prosecutor also argued that the court could take judicial notice of the orders. The court seemed to reject that argument out of hand, commenting that judicial notice only pertains to authenticity. After a lengthy argument of counsel, in which defense counsel not only contended that the orders were inadmissible hearsay but also that their contents were irrelevant and prejudicial, the court returned to judicial notice. It ruled that pursuant to Rule 5-201(g), it could take judicial notice of the orders and instruct the jurors that they "may, but [are] not required to, accept as conclusive any judicially noticed fact adverse to the accused." On that basis, the court admitted the orders.

On appeal, Laws contends the trial court erred by taking judicial notice of the orders and admitting them. She maintains it was the jury's function to decide whether the Will she filed was a false document and whether she committed perjury by stating in the Petition that she was nominated as personal representative of the Estate in the Will. She

argues that admission of the two orders invaded the province of the jury by establishing "facts central to the dispute in the case at bar." In addition, the orders contained inadmissible hearsay that unfairly prejudiced her.[7]

The State counters that the trial court was permitted to take judicial notice of the two orphans' court orders because they did not reveal assertions made in the orphans' court about the underlying facts or the positions taken by the parties in the caveat case; rather, each order simply set forth a legal action to be taken, without discussing the basis for it. The State also argues that the orders did not include inadmissible hearsay because 1) they detailed only "legally operative language, which is not hearsay," and 2) they were admissible under Rule 5-803(b)(8) as an exception to the rule against hearsay.

The doctrine of judicial notice "substitutes for formal proof of a fact 'when formal proof is clearly unnecessary to enhance the accuracy of the fact-finding process.'" *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (quoting *Smith v. Hearst Corp.*, 48 Md. App. 135, 136 (1981)). A court may take judicial notice of "either matters of common knowledge or [those] capable of certain verification." *Faya v. Almaraz,* 329 Md. 435, 444 (1993). *See also* Md. Rule 5-201(b).[8] Put another way, a court is justified

[7] Before the court took judicial notice of the orders, Merkle testified, in a non-responsive answer, that Revé had replaced Laws as the personal representative as a "result of setting aside and nullifying the Will." Defense counsel objected and moved for a mistrial, which was denied. On appeal, Laws argues that the trial court abused its discretion by denying the mistrial motion. Given our disposition of the issue concerning the court's admission of the orphans' court's orders, we need not address this argument.

[8] Rule 5-201(b) describes the kinds of facts that properly are subject to judicial notice:

(Continued…)

in taking judicial notice of a fact that is undisputed either because "'everybody around here knows that'" or it can be looked up for verification. *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 414 (2014) (quoting Lynn McLain, *Maryland Evidence, State & Federal* § 201:4(b)-(c), at 221, 237 (3d ed. 2013)).

We review a trial court's decision to take judicial notice of a fact under the "clearly erroneous" standard, mindful of "[t]he principle that there is a legitimate range within which notice may be taken or declined and that there is efficacy in taking it, when appropriate." *Smith*, 48 Md. App. at 141.

Public records, including court documents, can fall under the umbrella of judicial notice. *Abrishamian*, 216 Md. App. at 413. In general, a court may take judicial notice of its "'own respective records in the present litigation, both as to the matters occurring in the immediate trial, and in previous trials or hearings.'" *Lerner*, 132 Md. App. at 41 (quoting *McCormick on Evidence* § 330, at 766 (2d ed. 1972)).

Proper judicial notice of court documents "does not typically extend to facts relating *specifically* to the parties involved." *Abrishamian*, 216 Md. App. at 414 (emphasis in original). In addition, "'[a]s a general rule, a court may not take judicial notice of proceedings or records in another cause so as to supply, without formal introduction of

(…cont'd)

> A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

evidence, facts essential to support a contention in a cause then before it.'" *Attorney Grievance Comm'n of Maryland v. Bear*, 362 Md. 123, 138 (2000) (quoting *M/V American Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1491 (9th Cir. 1983)).

Moreover, the Court of Appeals has made clear that "'[a] judgment rendered in a civil case is not admissible in a criminal prosecution as evidence of the facts determined by such judgment because the parties are different, and because the quantum of proof required in a civil case is less than that required in a criminal one.'" *Lodowski v. State*, 302 Md. 691, 735 (1985) (quoting 3 *Wharton's Criminal Evidence* § 654 (C. Torcia, 1973, Cum. Supp. 1984)), *judgment vacated on other grounds*, 475 U.S. 1078 (1986). *See also U. S. v. Satuloff Bros.*, 79 F.2d 846, 848 (2d Cir. 1935), and cases cited therein ("Judgments and decrees rendered in civil suits are inadmissible in evidence in criminal prosecutions as proofs of any facts determined by such judgments or decrees, and the reason for the rule as stated has been that the parties are different and that the quantum of proof required in one case is different from that required in another."). This is because when, in a criminal case, a court admits prior records from a civil case decided under a lower standard of proof, it is likely the jury "may give too much weight to [the] prior judgment." *State v. Hoeffel*, 815 P.2d 654, 656 (N.M. 1991) (citing *McCormick on Evidence* § 318, at 894 (E. Cleary 3d ed. 1984)).

With all of that in mind, we turn to the charges in this case, which are essential to the question whether the trial court erred by taking judicial notice of the two orphans' court orders. In the first charge, predicated upon Md. Code (2002, 2012 Repl. Vol.),

section 8-602(a) of the Criminal Law Article ("CL"), Laws was accused of publishing a false document, that is, the Will, with intent to defraud. Specifically, the State alleged that she filed the Will either knowing or believing, at the time, that it was false and that she did so intentionally.

In the second charge, predicated upon CL section 9-101(a)(2), Laws was accused of willfully and falsely making an oath or affirmation as to a material fact in an affidavit required by law. Specifically, the State alleged that in the Petition, Laws did "WILLFULLY AND FALSELY MAKE AN AFFIRMATION THAT SHE IS ENTITLED TO BE NAMED AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF WILLIAM ARTHUR VAN CROFT[,] III BECAUSE 'I AM NOMINATED IN HIS LAST WILL & TESTAMENT[.]'" Indictment, Count 2.

The "adjudicative facts" the State sought to have judicially noticed by means of the two orphans' court orders were that, on December 17, 2008, the orphans' court found the Will to have no force and effect; and that, on November 13, 2008, the orphans' court removed Laws as personal representative of the Estate and made Revé the personal representative in her place. For the doctrine of judicial notice to apply at all, it is fundamental that whatever fact the doctrine is being invoked as a shortcut to prove is a fact that is material to the case. The whole purpose of the doctrine is to afford the court the discretion to take notice of a fact that must be proven but is so readily known in the community or so easily verifiable that it is a waste of time and resources to have the proponent go through the exercise of formal proof. Obviously, this purpose is not served unless the fact to be proven is material.

Here, the fact that a year and a half after the Will was written, and almost a year after it was filed, the orphans' court found, for unstated reasons, that it had no force and effect, was not a fact that had to be proven by the State because it was not material to either charge against Laws. As defense counsel argued below, the Will could have been declared of "no force and effect" for a host of reasons, none having anything to do with whether it was false.

The fact that Laws was removed as personal representative of the Estate almost a year after it was opened is, if possible, an even less material fact. It is undisputed that the Will nominates Laws as personal representative.[9] That Laws was removed as personal representative long after the Will was created has no bearing whatsoever on whether she intentionally misrepresented in the Petition that she was nominated to be personal representative in the Will. One does not follow logically from the other. As with the order regarding the Will, there are many reasons why the orphans' court might have removed Laws as personal representative, having nothing to do with whether her representation that she was nominated as personal representative in the Will was false.

To the extent that the trial court reasoned that the facts established in the orphans' court's orders could be used by the State to prove any of the essential elements of the crimes, it erred, and its decision to take judicial notice of these facts was in error. Moreover, even if the facts were material, which they were not, they were the conclusory

[9] The copy of the Will that allegedly was sent to Revé and given by Revé to Merkle was not offered into evidence. There was nothing at trial to suggest that that copy did not include the paragraph nominating Laws as personal representative.

results of rulings in a civil case, from evidence that is not disclosed, and that was based on a preponderance of the evidence, not a beyond a reasonable doubt, standard of proof.[10]

The trial court's error in taking judicial notice of the orphans' court's orders and admitting them into evidence on that basis was not harmless beyond a reasonable doubt. *See Dorsey v. State*, 276 Md. 638, 659 (1976). The State offered the orders as proof of Laws's knowledge that the Will and the representation in the Petition that she had been nominated as personal representative were false, even though they had no probative value. In closing argument, the prosecutor stated:

> Ms. Laws, on February 4, 2008, filed a counterfeit will. You will have that will. It's State's Exhibit 1. And you will be able to see each page of it. It doesn't have any page Mr. Merkle talked about.
>
> * * *
>
> No signature is on each and every one of these pages of the will. This will has been counterfeited, has been doctored.
>
> You will also have before you, which came into evidence, State's Exhibit 2. And you all have seen this because we published it for the jury. It's ordered by Orphan's Court on December 17th. In order that this last

[10] We note as well that the State's argument that, even if they contained hearsay, the orders were admissible under Rule 5-803(b)(8)(A), lacks merit. That rule, embodying the "Public Records and Reports" exception to the rule against hearsay, permits admission of reports and records made by a public agency setting forth the agency's activities, matters observed pursuant to a legal duty when there was a duty to report, factual findings in a final protective order proceeding, and:

> (iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law[.].

Here, none of the parameters of the rule apply and the orders clearly cannot be used against the defendant in a criminal case.

> will and testament, State's Exhibit 1 dated June 28, 2007, is found to have no force and effect.
>
> The other thing that has come in, and you have seen this already, is State's Exhibit 5. On November 13, 2008, it's ordered that Erika Laws be removed as personal representative and further ordered that Crawford [sic] be appointed the successor personal representative.
>
> Why those things are significant, ladies and gentlemen, is that this defendant filed a counterfeit will. She also filed, which you will see in State's Exhibit 1, with the State under penalty of perjury, which looks like this. It says, "I am nominated in his last will and testament."

This is nothing more than an argument that because the Will later was found to be of no force and effect, it must have been false; and that because Laws later was removed as personal representative, she must have lied in the Petition about having been nominated to take that position in the Will. With respect to the perjury charge, which is the only one that resulted in a conviction, jurors could have seized upon this argument and the documents on which it was based to conclude, unreasonable as it might be, that the fact that Laws was removed as personal representative meant that she had perjured herself in the Petition. The court's instruction to the jury that it would not be bound by the orphans' court's orders but could weigh them in reaching a verdict did not cure the prejudice to Laws (and was objected to).

We shall reverse the judgment against Laws and remand for further proceedings. In doing so, we note that we are somewhat perplexed about what evidence there is—especially given the verdict in favor of Laws on the false Will count—that could support a reasonable finding by a factfinder that Laws's statement in the Petition, that she was nominated as personal representative in the Will, was false.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED; CASE REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS ASSESSED TO PRINCE GEORGE'S COUNTY.